

# **IROQUOIS COUNTY BATTERY ENERGY STORAGE FACILITY ORDINANCE**



Adopted by: Iroquois County, Illinois  
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## I. INTRODUCTION

### A. Title

This Ordinance (“Ordinance”) shall amend the Iroquois County Zoning Ordinance and be known, cited, and referred to as the Iroquois County Commercial Battery Energy Storage Facility Ordinance.

### B. Purpose

This Ordinance is adopted for the following purposes:

1. To ensure that any development and production of stored electricity in all of Iroquois County (“County”) is safe and effective;
2. To assure the protection of health, safety, welfare, and property values for all County residents and landowners;
3. To facilitate economic opportunities for local residents;
4. To promote the storage of safe and reliable energy in support of Illinois statutory goals of increasing energy production from renewable energy sources; and
5. To mitigate the impact of commercial battery energy storage facilities (“BESFs”) on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources.

## II. DEFINITIONS

### A. Abandonment

The cessation of operations and/or maintenance of a BESF for six months or longer.

### B. Applicant

The entity or person who submits to the County an application for a conditional use permit for a BESF.

### C. Battery Energy Storage Facility (“BESF”)

The physical property on which a BESS is installed, including but not limited to supporting facilities, transmission lines, substations, access roads and equipment.

**D. Battery Energy Storage System (“BESS”)**

One or more physical container(s) providing secondary containment to battery cells, that is/are equipped with cooling, ventilation, fire suppression, and a battery management system. Also, referred to as energy storage systems, a BESS is further classified as a Tier 1 or Tier 2 BESS as follows:

Tier 1: A BESS that has an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consists of only a single BESS unit. A rechargeable BESS is typically used to provide standby or emergency power and/or uninterruptable power supply, load shedding, load sharing, or similar capabilities relating to the energy consumed by a residence, farm operation, or other business on site.

Tier 2: A BESS that has an aggregate energy capacity greater than 600 kWh or is comprised of more than one BESS unit for the primary purpose of storing electricity for wholesale or retail sale.

**E. Berm**

An earthen ridge or embankment raised above the natural grade to separate areas in a physical way.

**F. Cell**

The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy

**G. Facility Owner**

An entity (i) with a direct ownership interest in a BESF, regardless of whether the entity is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility, or (ii) at the time the facility is being developed, an entity who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility, regardless of whether the entity will own or operate the facility.

**H. Financial Assurance**

Cash in escrow, or another form expressly approved by the County Board,

deposited in an account with an insured financial institution and that is held by the County Treasurer as the beneficiary.

**I. Licensed Illinois Professional Engineer**

A qualified individual who is licensed as a professional engineer in the State of Illinois.

**J. Nonparticipating Property**

Real property that is not a participating property.

**K. Nonparticipating Residence**

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 BESF is accepted by the County.

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

**M. Operator**

The entity responsible for the day-to-day operations and maintenance of the BESF including any third-party subcontractors.

**N. Participating Property**

Real property that is the subject of a written agreement between a BESF 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 BESF or supporting facilities. Participating property also includes real property that is owned by a facility owner for the purpose of constructing a BESF or supporting facilities.

**O. 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 BESF is accepted by the County.

**P. Primary Structure**

The structure that one or more persons occupy the majority of time on that property for either business or personal reasons. Primary structures include structures such as residences, commercial buildings, hospitals, churches, schools, and day care facilities. Primary structures exclude structures such as hunting sheds, storage sheds, pool houses, unattached garages, and barns.

**Q. Protected Lands**

Real property that is:

1. Subject to a permanent conservation right consistent with the Illinois Real Property Conservation Rights Act; or
2. Registered or designated as a nature preserve, buffer, or land and water preserve under the Illinois Natural Areas Preservation Act.

**R. Solar Panel**

A panel designed to absorb the sun's rays as a source of energy for generating electricity or heating.

**S. Solicitor**

Any person intending to solicit a landowner in person for the lease, purchase, or use of property for a BESF or any component thereof.

**T. Substation**

The apparatus that connects the electrical collection system of the BESF and increases the voltage for connection with the utility's transmission lines.

**U. Supporting Facilities**

Include but are not limited to the transmission lines, substations, access roads, storage containers, and equipment associated with the generation and storage of electricity by the BESF.

**III. APPLICABILITY**

This Ordinance governs the permitting of any Tier 2 BESF that stores electricity to be sold to wholesale or retail markets. This Ordinance also applies to any supporting facilities as specified in the conditional use application pursuant to

Section VI of this Ordinance. This Ordinance and the specified application processes only apply to BESFs. Any BESF that is included as part of the initial conditional use permit application for a Commercial Wind Energy Facility (“CWEF”) or Commercial Solar Energy Facility (“CSEF”) is subject to their respective ordinances under the Iroquois County Zoning Ordinance, and/or any conditions or requirements of approval of such facility. Any BESF that is proposed to be included as part of an already approved CWEF or CSEF, after the initial conditional use permit application is approved by the County, shall require an approved amendment to the conditional use permit and shall be subject to additional conditions or requirements of approval, including but not limited to separate road use agreements/financial assurances and separate decommissioning agreements/financial assurances.

Modifications to, retrofits, or replacements of an existing or subsequent BESF that increases the total designed discharge duration or power rating shall be subject to this Ordinance. Any BESS that intends to modify, retrofit, or replace any existing equipment which increases the designed discharge duration or power rating must apply for an amended special use permit prior to modifying, retrofitting, or replacing said equipment. Any increases in the footprint or changes in the layout of the BESF from the original footprint or layout from the original approval of the conditional use permit are prohibited absent approval of an amended conditional use permit.

#### IV. PROHIBITION

No BESF nor any component thereof shall be constructed, erected, installed, or located within the County without approval by the County Board through the issuance of a conditional use permit and issuance of a building permit. Additionally, no BESF shall be installed within the County unless all road use agreements and decommissioning agreements have been entered into with each applicable governmental agency and all required financial assurances have been posted and provided to the County or applicable governmental agency.

## V. SOLICITATION

- A. Prior to contacting any property owner or owner's representative, any person intending to solicit a landowner in person for the lease, purchase, or use of property for a BESF or any component thereof shall submit to the County Zoning Administrator an application for a solicitor permit, remit an application processing fee in the amount of \$100.00, and submit to a criminal background check.
- B. A solicitor permit shall only be issued upon approval by the County Zoning Administrator and receipt of a solicitor permit fee in the amount of \$1,000.00. A solicitor permit shall be valid for one calendar year from the date of issuance and is not transferrable to any other person.

## VI. BESF CONDITIONAL USE APPLICATION PROCESS

To obtain approval, the applicant must first submit a conditional use permit application to the County Zoning Administrator. The application must be submitted in English. The applicant shall submit 10 complete copies of the BESF conditional use permit application and the required fee in the form of a cashier's check or electronic funds made payable to the County. One copy shall be submitted as an electronic copy in a DOCX or PDF format. The following fees and information are required to be included with the conditional use permit application:

### A. Application Fees

Prior to processing any conditional use permit application for a BESF, the applicant must submit a cashier's check, or electronic funds, made payable to the County for the conditional use permit application fee equal to \$20,000.00 for each of the first four megawatts ("MW") and \$5,000.00 for each additional MW of nameplate generating capacity, up to a maximum fee of \$250,000.00. These funds shall be placed in an insured and interest-bearing account and will be used to cover the County's costs incurred in processing the conditional use permit application. All fees noted above include but are not limited to those costs corresponding with all direct, indirect, or third-party costs associated with

any hearing, permitting, operations, and studies. If the County's expenses exceed the amount of the initial application fee, the applicant will be billed and shall reimburse the County for said excess expenses within 30 days of each invoice. Any unused fees shall be reimbursed to the applicant upon issuance of a building permit or 180 days after the decision of the County Board, whichever is later. The applicant may apply unused conditional use permit application fees toward the building permit fee.

**B. Additional Information**

The conditional use permit application shall contain or be accompanied by the following information:

1. The name, address, phone number, and electronic contact information of the applicant, facility owner, and operator, and all participating property owners, including their respective business structures. The applicant shall include copies of all leases, easements, licenses, or other ownership interest in the properties.
2. A project summary including but not limited to a description of the project, its approximate total nameplate storage capacity in MWs, all potential equipment manufacturers, types of BESS, number of BESS, total storage capacity of each BESS container, the location of each BESS within the project, location of the BESF, and the project name.
3. An affidavit or other necessary documentation to verify that the applicant, facility owner, company, and parent companies have the financial ability to complete the project as proposed.
4. A site plan for the project showing the planned location of each BESS, including legal descriptions for the site, 9-1-1 addresses, and parcel numbers for the site, identifying the BESS locations within the planned or existing BESF, all participating residences, nonparticipating residences, and occupied community buildings, property boundary lines including identification of all adjoining properties, setback lines, public access roads and turnout locations, substations, operations and maintenance buildings,

ancillary equipment, third party transmission lines, the location of any wetlands, flood plains within 0.5 miles of the project, drainage structures including surface ditches and subsurface drainage lines, protected lands, scenic and natural areas with 2,500 feet of the proposed BESF, and the layout of all structures within the geographical boundaries of any applicable setbacks.

5. All required reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance, and all applicable federal and state laws/regulations including but not limited to those enacted/issued by the Federal Aviation Administration, the U.S. Fish and Wildlife Service, the Illinois Department of Natural Resources, the Illinois Environmental Protectional Agency.
6. The applicant shall supply an EcoCAT study from the Illinois Department of Natural Resources performed within the last 12 months from the date of the application.
7. Any other information normally required under the Iroquois County Zoning Ordinance or requested by the County.
8. A preliminary decommissioning plan with cost estimations.

#### C. Zoning Districts

1. BESFs shall only be located in A1 or A2 districts and must obtain a conditional use permit prior to the submission of an application for a building permit.
2. The design standards and bulk regulations applicable to A1 and A2 districts for setbacks, lot size, lot coverage, lot area, height, and signage shall be suspended for all BESFs and the regulations herein shall apply instead. All other design standards and bulk regulations of the respective districts shall apply.

#### D. Utility Agreement

At the time of applying for the conditional use permit, written proof shall be provided that the applicant has an interconnect agreement with an electric

utility company. Upon reasonable cause shown by the applicant, the County may allow for a variance of this requirement to allow that proof of an interconnect agreement be provided prior to the issuance of a building permit.

**E. Existing Conditions**

The applicant shall submit the following:

1. Existing property lines and property lines extending 500 feet from the exterior boundaries, including the names of adjacent property owners and current use of those properties.
2. Existing public and private roads, showing widths of the roads and any associated easements.
3. Location and size of any existing and abandoned wells and sewage treatment systems.
4. Existing buildings and any impervious surfaces.
5. A contour map showing topography at two-foot intervals. A contour map of surrounding properties may also be required.
6. Existing vegetation including type and percent of coverage (i.e., cropland/plowed fields, grasslands, wooded areas, etc.).
7. Waterways, watercourses, lakes, and public water wetlands.
8. Any delineated wetland boundaries.
9. A copy of the current FEMA/FIRM map for the subject property along with the 100-year flood elevation showing regulated flood protection elevation within a 0.5-mile radius of the project.
10. Floodway, flood fringe, and/or general flood plain district boundaries, if applicable and not provided on the copy of the current FEMA/FIRM map.
11. Mapped soils, according to the County soil survey.
12. Surface water drainage patterns.
13. A tile survey identifying the location of all subsurface drainage structures including drain tiles.

**F. Coordination with Local Fire Departments**

1. The facility owner shall submit to all local fire departments with jurisdiction

over the BESF and the Eastern Illinois Mutual Aid Association, a copy of the site plan.

2. Upon request by a local fire department, the facility shall cooperate with the local fire department to develop the fire department's emergency response plan. In addition, at no cost to the local fire department, the facility owner shall provide to the local fire department any and all specialized and necessary new rescue or retrieval equipment occasioned by the use of the particular equipment being used at the project (i.e., gurneys, body harnesses, PPE, etc.).

In addition, the facility owner shall have the requirement to update, at no cost to the local fire department, such equipment in possession of the local fire department as any updates are presented to the facility owner in the normal course of business.

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

#### G. Consideration for Use of Public Roads

In consideration of use of public roads, a proposed access route map shall be included with the conditional use permit application. Also to be included shall be a list of all impacted road authorities complete with contact information and proof of notice to such road authorities of the conditional use permit application. Prior to the issuance of a building permit, the applicant shall enter into a road use agreement with the County, as approved by the County Board, and copies of executed road use agreements entered into with each impacted road authority shall be provided to the County.

#### H. Changes in Information

The applicant shall notify the County Zoning Administrator of changes to any information provided in the conditional use permit application occurring while the application is pending.

#### I. All Costs to be Paid by Facility Owner

In addition to all fees required under this Ordinance, the facility owner shall pay

all costs incurred by the County including but not limited to all costs incurred by any offices, boards, and commissions of the County or third parties associated with the County. Such costs include but are not limited to direct or indirect costs associated with any hearing, permitting, operations, inspections, decommissioning, litigation, disputes, and/or negotiations occurring during the conditional use permit application and building permit processes.

**J. Application Acceptance**

A conditional use permit application shall be deemed complete when it contains all information and documents required under this Ordinance. The application filing date shall be the date on which the County determines the application is complete.

**K. Public Hearing**

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 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 hearing facilitator.

**L. Material Changes**

Material changes to the conditional use permit application are not permitted once the notice of the public hearing has been published.

**M. Permit Expiration**

A building permit must be applied for and approved within two years from the date of conditional use permit approval by the County Board.

**VII. BUILDING PERMIT REQUIREMENTS AND OPERATING PERMIT FEE**

Following conditional use permit approval by the County Board, the applicant is eligible to apply for a building permit for the BESF subject to the following

requirements and conditions:

**A. All Costs Are Current**

All costs for fees and studies required for the conditional use permit and building permit application processes must be current and paid in full.

**B. BESF Building Permit Fee and Operating Permit Fee**

1. Prior to the issuance of a building permit, the facility owner must deposit a building permit fee equating to \$10,000.00 per MW of total nameplate capacity of the BESF. The applicant shall pay the fee in the form of a cashier's check or electronic funds made payable to the County.
2. A single operating permit fee of \$10,000.00 shall be provided in the form of a cashier's check or electronic funds made payable to the County.

**C. Site Plan**

The applicant shall submit the following:

1. Location map with the addresses, number, and spacing of battery arrays.
2. Location of access roads and access points.
3. Planned location of underground or overhead electric lines connecting the BESF to a building, substation, or other electrical load.
4. Manufacturer specifications and recommended installation methods for all major equipment, including BESS containers/units, mounting systems and foundations.
5. A description of the method of connecting the BESS containers/units to off-site facilities.
6. New electrical equipment other than the existing building or substation that is to be the connection point for the BESF.
7. A drawing prepared by a licensed Illinois professional engineer depicting the BESF and its relationship to structures on adjacent lands.

**D. Setbacks**

The regulations regarding the site of the BESF, with the following setback distances measured from the nearest edge of any component of the facility:

1. 500 feet measured from the nearest point of the outside component of the

facility to the property line of any occupied community buildings or dwellings on nonparticipating properties.

2. 50 feet to the nearest point on the property line of a participating property.
3. 200 feet from the nearest edge of a public road right-of-way.
4. 500 feet from the edge of any interstate highway right-of-way.
5. 500 feet from the edge of any railroad track right-of-way.
6. 500 feet to the nearest point on the property line of a nonparticipating property.

**E. Fully Executed and Funded Public Road Use Agreements**

All BESF building permit applications shall be accompanied by fully funded and executed public road use agreements entered into with each road authority impacted by the project. Financial assurance funding shall be in the form of a cashier's check, electronic funds, or other form approved by the County Board or appropriate road authorities for the amount required by the respective road use agreement.

Public Road Use Agreements shall include at a minimum:

1. A final map identifying the roads and rights-of-way that will be utilized for the construction, operation, and decommissioning of the BESF.
2. A list of all impacted road authorities and contacts.
3. Other inclusions as specified or required by the County Board, County Engineer, or impacted road authorities.
4. The agreement shall contain a limitation on liability clause.
5. Any road damage caused by the transportation, installation, maintenance, or removal of any equipment or materials associated with the BESF must be completely repaired to the reasonable satisfaction of the County Engineer, or appropriate local roadway road authority. The County Engineer may choose to require the remediation of road repair upon completion of construction of the BESF and is authorized to collect fees for overweight and/or oversized load permits. Further, financial assurance shall be provided in an amount to be fixed by the County Engineer to ensure the

County that future repairs are completed to reasonable satisfaction. Such financial assurance shall be in the form of cash in escrow or other form approved by the County Board and deposited in an account held by the County or the appropriate road authority as the beneficiary with an insured financial institution.

6. All repairs and improvements to County public roads and roadway appurtenances shall be subject to the prior approval of the County Engineer before being made and shall also be subject to inspection and acceptance by the County Engineer after such repairs and improvements are completed. Road use agreements entered into with the County and any further agreements contemplated therein, regarding the maintenance and repair of public roads and highways, must be approved by the County Engineer prior to the approval of any building permit applications related to the construction of the BESF.

#### F. Decommissioning Plan

The applicant must submit a completed and agreed upon decommissioning agreement pursuant to the terms of this Ordinance. (See Section XI).

#### G. Design and Installation.

The following design requirements shall be followed:

1. An earthen berm shall be placed around no more than six BESS or containers/units totaling 25 MW in storage capacity, which is lesser. The berm's height shall be at a minimum two-thirds the height of the container/units' installed height and shall encompass three side of the BESS installation.
2. A fire break with a minimum of 15 feet of width must exist on all interior sides of the facility.
3. Knox boxes and keys shall be provided at locked entrances for emergency personal access.
4. A first suppression system shall be incorporated into the design.
5. Systems shall include cooling mechanisms to prevent overheating.

6. Redundant temperature monitoring systems shall be installed to detect abnormal conditions.
7. Adequate ventilation shall be installed to disperse heat and gases generated during operation.
8. BESS enclosures shall be designed to vent safely during thermal runaway events.
9. BESF equipment and structures shall be fully enclosed and secured by a woven wire or equivalent fence that allows ingress and egress by small animals with a minimum height of ten feet with a locking gate to prevent unauthorized access.
10. Security cameras and monitoring systems shall be installed.

#### H. Foundations

Foundations must be designed to support the weight and configuration of the individual BESS containers/units. Prior to any building permit approval, a licensed Illinois structural engineer hired by the County with the cost invoiced to the facility owner, shall review, and verify that each BESS foundation and the design of the BESF is within accepted professional standards, given local soil and climate conditions.

#### I. Other Standards and Codes

1. The BESS containers/units 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.
2. The system must adhere to relevant standards, such as NFPA 855 (Standard for the Installation of Stationary Energy Storage Systems) and UL 9540.
3. All electrical components of the BESF shall conform the National Electrical Code (“NEC”) as amended.

#### J. Height Limits

The BESF is to be constructed so that no component has a height greater than 20 feet above ground. Electric transmission lines and utility poles are excluded from these height requirements.

#### K. Landscape Plan

1. A landscape plan shall be submitted with the application for review and approval by the Iroquois County Soil and Water Conservation District. This plan must include weed control for the entire property including inside and outside the fenced area. BESF inspections shall be conducted once the facility is planted/seeded and every three years thereafter unless necessitated by complaints or otherwise shall not replace the triennial inspection requirements. The cost of any inspections by the Iroquois County Soil and Water Conservation District shall be invoiced to the facility owner by the County with payment due 30 days from the invoice date.
2. The equipment and structures shall be fully enclosed and secured by a woven wire or equivalent fence that allows ingress and egress by small animals with a minimum height of eight feet.
3. The entirety of the BESF shall be enclosed within a living buffer of evergreen trees that must be planted and maintained during construction and will meet or exceed the height of the BESF and all facility equipment, including fencing. Additionally, the facility owner must comply with any screening requirements requested by the Iroquois County Soil and Water Conservation District and must be consistent with state law and this Ordinance.

An alternative buffer may also be considered. Earth berms or other topographical features and existing wooded areas may be accepted in lieu or in combination of the above requirements if they conceal the use from public view and are maintained.

4. The landscape plan shall also incorporate native grasses, flowers and plants which provide wildlife and pollinator habitat, soil erosion protection,

and aid in strengthening the soil structure.

**L. Lighting**

If lighting is provided at the site, the lighting shall be shielded and downcast such that the light does not spill onto adjacent parcels or residences.

**M. BESF Building Permit Approval**

Once all criteria and standards have been met, the County Tax/Planning/Zoning Committee shall vote to approve issuance of a building permit at its next regularly scheduled meeting. The vote on a building permit is non-discretionary if the applicant has satisfied all Ordinance requirements, conditions of approval, and federal/state law.

**VIII. CONSTRUCTION STANDARDS**

After receiving a building permit for the BESF, the facility owner may begin the construction phase of the project. Construction must begin within 12 months of the date of issuance of the building permit, or it will become invalid. Necessary inspections shall be performed by the County, contracted individuals, and/or third-party vendors. The facility owner is responsible for the cost of any inspections. Inspections shall include but are not limited to the following subject matters:

**A. Power and Communication Lines**

1. Power and communication lines running between banks of storage units and to electric substations or interconnections with buildings within the perimeter of the project shall be buried according to the National Electric Code (“NEC”) as adopted by the County Board at the time of acceptance of the building permit application. All power and communication lines outside the fenced perimeter of the battery storage development shall be buried no less than six feet deep. During the installation and before wires and lines are covered there shall be an inspection for compliance by an independent inspector hired by the County with the cost invoiced to the facility owner. Failure to make payment to the County within 30 days of the invoice date shall be deemed a default. Exemptions or variances may be granted by the

County Board in instances where shallow bedrock, water courses, or other elements of the landscape interferes with the ability to bury lines.

2. All power and communication lines shall be geo-located for inclusion on record drawings.
3. J.U.L.I.E. shall be contacted before commencing any excavations or digging.
4. All electrical components of the BESF shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g., ANSI, UL, and International Electrotechnical Commission).

#### B. Drainage Tiles

1. All drainage tiles shall be repaired or restored to same or better condition as to when the project began. There shall be an inspection for compliance by an independent inspector chosen and hired by the County with the cost invoiced to the facility owner.
2. Local drainage districts and all property owners shall be contacted prior to beginning development to locate drainage district tiles within the project's limits.

#### C. Warnings Signs

1. A 9-1-1 warning sign which conforms to the specifications of the Iroquois County Zoning Ordinance for size, color and reflectivity shall be placed and maintained by the facility owner at the entrance to each BESF or supporting facility access road from a public road. A sign or posting no more than four square feet in area shall be placed and maintained in conjunction with, but in a subordinate position of, that same 9-1-1 sign, on all sides of the fenced BESF or supporting facilities. The signs shall provide a toll-free telephone number, answered by a person 24 hours a day, seven days a week, for emergency calls and informational inquiries.
2. A 9-1-1 compliant, visible warning sign concerning voltage must be affixed to fencing on all sides of the BESF, including the base of all pad-mounted transformers and supporting facilities.

3. Warning signs identifying underground wire locations shall be placed at all road crossings, creek, waterway, and ditch crossings, and at the exits of the BESF and supporting facilities.

**D. Record Map and Plans**

Prior to the commercial operation date of the BESF, the facility owner shall deliver all record maps and plans, including a final site plan and engineering plans for the facility that have been signed and stamped by a licensed Illinois professional engineer to the County Board for final approval and acceptance to operate.

**IX. PRIOR TO COMMERCIAL OPERATIONS**

Each BESF shall have a final inspection performed by an independent, certified inspector hired by the County with the cost invoiced to the facility owner, at the completion of the construction of the project and prior to receiving approval to begin operations. Such inspection shall verify compliance with the zoning regulations, building permit conditions, landscaping requirements and other applicable regulatory codes such as with the NEC and NFPA 855. Before a commercial operation date is determined and approved by the County Board, all items within this Ordinance must be complied with, all inspections passed, all financial assurances deposited with the County Treasurer and/or appropriate authority, and all costs shall be reimbursed to the County.

**X. ONGOING OPERATIONS REQUIREMENTS**

The following items must be complied with throughout the lifetime of the project:

**A. Semi-Annual Report**

The facility owner must submit a semi-annual operational report to the County Board, based on the date of the project's commercial operation date. This report shall contain the following information:

1. The monthly electrical output of the facility reported in kWh for the prior six months;

2. A general description of any physical repairs, replacements, or modifications to the facility and/or its infrastructure;
3. Proof of liability insurance; and
4. The facility owner of the BESF must submit, on a semi-annual basis, a summary of the operation and maintenance reports to the County Board. The summary shall include complaints pertaining to setbacks, noise, appearance, safety, lighting, and use of any public roads received by the facility owner concerning the facility and the resolution of such complaints.

**B. Maintenance**

1. The site must be maintained to prevent fire hazards and be in compliance with state and federal environmental regulations. No soil sterilant shall be permitted to be used on the BESF. There shall be a \$500.00 per day fine for non-compliance with this paragraph.
2. Any physical modification to the BESF that alters any of the major electrical components so that such modification requires re-certification from the original third-party certifying entity of the BESF (e.g., UL, etc.), will require the facility owner of the BESF to obtain such re-certification for the impacted BESF components from such third-party entity in accordance with its then-existing design standards and processing times for re-certification certificates. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the facility owner shall confer with the County Board to determine whether the physical modification requires re-certification. Any increase in the overall nameplate capacity or physical size shall require an amendment to the conditional use permit and be subject to a new public hearing. Amendment of a conditional use permit shall require a new conditional use application fee and building permit fee for the additional nameplate capacity.

**C. Materials Handling, Storage, and Disposal**

1. All solid wastes related to the construction, operation, maintenance and decommissioning of the BESF shall be removed from the site promptly and

disposed of in accordance with all federal, state, and local laws.

2. All hazardous materials related to the construction, operation, and maintenance of the BESF shall be handled, transported, and disposed of in accordance with all applicable local, state, and federal laws.
3. The outdoor storage of materials, vehicles and equipment that directly support the operation and maintenance of the BESF shall not be allowed. Chemicals and hazardous materials must be kept inside a storage shed. The County Zoning Administrator or its designee shall have the discretion in determining whether the outdoor storage is in compliance with this provision. All outdoor storage areas shall have at the minimum a gravel surface covering.

#### D. Inspections

The facility shall be inspected annually for three years following the commercial operation date to verify continued compliance with the Ordinance's requirements. These inspections shall include on-site visits from the staff of the local fire departments/districts to ensure that the necessary protective equipment is provided. Also, the Iroquois County Soil and Water Conservation District shall verify that the landscape plan is being followed. Additional inspections necessitated by complaints or otherwise shall not replace annual or triennial inspection requirements. The cost of all inspections shall be invoiced to the facility owner by the County with payment due 30 days from the invoice date. Upon completion of any inspection, a report shall be prepared and submitted to the County Board and facility owner.

## XI. DECOMMISSIONING PLAN

Prior to the issuance of a building permit, the facility owner or operator shall enter into a decommissioning agreement with the County, which shall incorporate the agreed upon decommissioning plan (including the means and methods by which decommissioning will be achieved), agreed upon decommissioning cost estimates, and financial assurance in a form and amount approved by the County Board that

ensures the BESF project is properly and completely decommissioned. The facility owner is responsible for reimbursement of all County's costs for purposes of the decommissioning plan/agreement, including any costs in contracting with any third parties, such as engineers and/or legal counsel for review of any decommissioning information/documents and any information/documents proposed by the facility owner or its representatives.

## **XII. NOISE LEVELS**

Noise levels from the BESF project shall comply, at all times, with applicable Illinois Pollution Control Board ("IPCB") regulations and requirements.

## **XIII. PUBLIC PARTICIPATION**

Nothing in this Ordinance is meant to augment or diminish existing opportunities for public participation.

## **XIV. LIABILITY INSURANCE**

The facility owner of a BESF shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$40 million per occurrence and \$40 million in the aggregate. The facility owner of the BESF shall maintain this policy for the lifetime of the facility and submit a copy of same to the County Board at each renewal. Over time the County may find it necessary to increase or decrease the amount of coverage and the facility owner shall be required to make the adjustment at the next renewal. The County and its officials shall be named as additional insureds.

## **XV. CHANGE IN OWNERSHIP**

If the facility owner of the BESF changes, the successor owner or operator must assume in writing all obligations of the original BESF conditional use permit (including conditions), building permit, site plan approval, road use agreements, decommissioning agreements, and any other agreements entered into with the

County. The owner or operator (or successor) must pay to the County a fee of \$5,000.00 for the purpose of the County's review of the successor party's ability to own or operate the BESF. The successor owner or operator of the BESF shall notify the County Zoning Administrator in writing of the ownership or operator change and written proof that it has assumed all obligations required by this Ordinance within 30 days of the ownership or operator change. The BESF conditional use permit and all other permits/approvals for the BESF shall be void if the new owner or operator fails to fulfill these requirements. Reinstatement of a void conditional use permit, building permit, or operating permit shall be subject to the same review and approval processes for new applications under this Ordinance.

#### **XVI. DEFAULTS AND REMEDIES**

The applicant's, facility owner's, or operator's failure to materially comply with any of the above provisions shall constitute a default under this Ordinance.

- A. If the BESF is declared to be unsafe by the County by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage, or abandonment is hereby declared a public safety issue and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in this Ordinance.
- B. Failure by the applicant, owner, or operator to comply with any provisions of this Ordinance, provisions under the conditional use permit, other permits, any conditions imposed on the project, and/or failure to comply with any law or regulation shall constitute a default under this Ordinance and shall be grounds for revocation of any conditional use permit or other permits granted by the County Board or the County.
- C. Prior to implementation of the existing County procedures for the resolution of such default(s), the County shall first provide written notice to the owner and operator, setting forth the alleged default(s). Such written notice shall provide the owner and operator a reasonable time period, not to exceed 30

days, for good faith negotiations to resolve the alleged default(s).

- D. If the County determines that the parties cannot resolve the alleged defaults within the good faith negotiation period, the County shall make application to the circuit court for an injunction requiring conformance with this Ordinance or make such other order as the court deems necessary to secure compliance with the Ordinance.
- E. Any violation of this Ordinance shall be an offense punishable by a fine of \$1,000.00. Each violation shall be a separate offense. Each day a violation occurs or continues shall be a separate offense, subject to a \$1,000.00 fine for each additional day the violation is not corrected. A court may set any additional and appropriate per day fine for each day the infraction exists or until such infraction is remedied. It is the goal of this Ordinance to promote structural safety to protect the public. The court has the authority to set any additional appropriate fines and will consider the nature of the offense, the degree of public safety involved, and the efforts of the County and responsible owner or applicant to resolve quickly and safely any and all infractions. It is the intent that any dispute between the parties be resolved promptly and where possible by informal discussions.
- F. After the effective date of this Ordinance, any persons who, being the owner or agent of the owner of any land, or project developer, located within the territorial jurisdiction of this Ordinance proceeds with development of a BESF prior to being approved under the terms of this Ordinance shall be fined as stated herein.
- G. The County reserves the right to hire outside counsel to enforce this Ordinance or determine compliance with this Ordinance. The owner/operator is liable for payment of reasonable attorney's fees in this regard.
- H. Nothing herein shall prevent the County from taking such other lawful action to prevent or remedy violations. All costs connected therewith shall accrue to the applicant, owner, or operator responsible for the project.

## XVII. SEVERANCE

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

## XVIII. INDEMNIFICATION

The applicant, facility owner and/or operator of the BESF project shall defend, indemnify and hold harmless the County and its officials, employees, committees, volunteers and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including attorney's fees, without limitation arising out of acts of omissions of the applicant, facility owner and/or operator associated with the construction, operation, and decommissioning of the BESF project.

## XIX. FACTORS FOR CONSIDERATION

The County Board may approve a BESF conditional use permit application, if it finds the evidence complies with state and federal law and regulations, and with the standards of the Iroquois County Zoning Ordinance including the factors listed below. The factors below are applied as a balancing test, not individual requirements to be met.

- A. The establishment, maintenance, or operation of the BESF will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- B. The BESF will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values of surrounding properties.
- C. The establishment of the BESF will not impede the normal and orderly development and improvement of the surrounding properties.
- D. Adequate public utilities, access roads, drainage and/or necessary facilities

have been or will be provided.

- E. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- F. The proposed BESF is not contrary to the objectives of the current comprehensive plan of the County (if any).
- G. The BESF shall, in all other respects, conform to the applicable regulations of this Ordinance and the zoning district in which it is located except as such regulations may, in each instance, be modified pursuant to the recommendations of and approved by the County Board.