

Notice of Public Hearing
Huron County Planning Commission
Wednesday, November 6, 2024, at 7:00 p.m.
Huron County Expo Center
170 W. Soper Road
Bad Axe, Michigan 48413

Consideration of Huron County Zoning Ordinance Text Amendments to
Article XV: Special Approval Use Permits Section 15.02
Utility-Scale Solar Energy Systems
Utility-Scale Battery Energy Storage Systems

NOTICE IS HEREBY GIVEN that the Huron County Planning Commission will conduct a public hearing on Wednesday, November 6, 2024, at 7:00 p.m., during a regular meeting, to receive comments on the following proposed zoning ordinance text amendments pursuant to PA 110 of 2006, as amended, being the Michigan Zoning Enabling Act:

ZA 2024-01: Zoning Ordinance Text Amendments pertaining to the following:

1. Repeal the Huron County Commercial Solar Energy Moratorium, Article XV, Section 15.02.9, [§ 9.1 thru 9.7] Moratorium ordinance which expired June 8, 2019.
2. Establish standards for the siting, installation, operation, repair, decommissioning, and removal of a Utility-Scale Solar Energy Facility within the Agricultural and Industrial Zoning Districts as a Special Land Use.
3. Establish standards for the siting, installation, operation, repair, decommissioning, and removal of a commercial-scale Battery Energy Storage System Facility within the Agricultural and Industrial Zoning Districts as a Special Land Use.

Copies of the above text amendments are available upon request by contacting the Huron County Building & Zoning Department and are also available online at <http://www.co.huron.mi.us/>.

Persons interested in the above are invited to this hearing. For those unable to attend the meeting, written comments will be accepted by mail at the Huron County Building & Zoning Department, 250 E. Huron Avenue, Room 102, Bad Axe, Michigan 48413, by fax to 989-269-3362, or by email smithj@co.huron.mi.us. The Zoning Ordinance of Huron County/Zoning Maps and proposed amendments are available for review during office hours, 8:30 a.m. to 4:30 p.m., prior to the hearing. Following the public hearing, a recommendation may be transmitted to the Huron County Board of Commissioners for action. Questions concerning the above should be directed to Jeff Smith of the Huron County Building & Zoning Department at 989-269-9269.

This notice is disseminated and posted pursuant to the Michigan Zoning Enabling Act, PA 110 of 2006, as amended.

Huron County Planning Commission
Bill Renn, Chairman

Solar Energy Ordinance

9/16/2024 DRAFT

Starting the solar ordinance at section 15.02.9 of the Zoning Ordinance assumes the solar moratorium (which is currently 15.02.9) is rescinded.

SECTION 15.02

15.02.9. Solar Energy Facilities

15.02.9.1. Definitions

Abandoned/Abandonment: To give up, discontinue, withdraw from. Any solar energy facility that ceases to produce energy on a continuous basis for one hundred eighty (180) days will be considered abandoned.

Applicant: This term applies to a person, company, or other legal entity that makes an application under this ordinance.

Collection System: The system of electrical lines within the Utility Scale Solar Energy Facility between the solar panels and any public utility substations.

Component: Any equipment in the Utility Scale Solar Energy Facility prior to the point of interconnection at the transmission line.

Decommission Plan: A document that details the planned shut down or removal of a solar energy facility from operation or usage.

Dwelling: A building that is occupied as a home, residence or sleeping place by one or more persons.

Energy Storage System: Rechargeable system that allows storage of energy from solar arrays or the electric grid for the purpose of commercial distribution. This may be located on parcels with a Utility

Scale Solar Energy Facility, or on parcels that do not have a Utility Scale Solar Energy Facility.

Fence: A continuous barrier extending from the surface of the ground to a uniform height from the ground to any given point, constructed of steel chain link, or other suitable material of similar nature and strength.

Height: The height of the solar array of the Utility Solar Energy Facility when it is at its highest point at maximum tilt.

Non-Participating Parcel: A property that is not subject to a Utility Scale Solar Energy Facility lease or easement agreement at the time an application is submitted for a Special Land Use for the purposes of constructing an Utility Scale Solar Energy Facility.

Operator: Entity charged with the daily operation/maintenance of a Utility Scale Solar Energy Facility.

Owner of Facility: A person, company, or other legal entity, with legal ownership of the Utility Scale Solar Energy Facility.

Owner of Land: A person, company, or other legal entity, with legal ownership of real property who can lease or mortgage the property as collateral for a loan.

Participating Parcel: A property participating in a lease or easement agreement, or other contractual agreement, with an entity submitting a Special Land Use Permit application for the purposes of developing a Utility Scale Solar Energy Facility.

Solar Array: Multiple solar panels that collect energy from the sun to generate electricity as part of a Solar Energy System.

Solar Energy System: Equipment and components designed to collect energy from the sun to generate electricity.

Transmission Line: Electrical lines transmitting energy from the Utility Scale Solar Energy Facility's substations to public utility substations.

Utility Scale Solar Energy Facility: A Solar Energy System where the principal design, purpose or use of such system is to provide energy to off-site uses or for the wholesale or retail sale of generated electricity to any person or entity.

15.02.9.2. Utility Scale Solar Energy Facility

1. Purpose and Intent: A Special Use Permit issued by the Planning Commission shall be required for any Utility Scale Solar Energy Facility to be installed and operated within Agricultural and Industrial Districts zoned by the County. The purpose and intent of this Ordinance is to establish standards for the siting, installation, operation, repair, decommissioning, and removal of a Utility Scale Solar Energy Facility within the Agricultural and Industrial District as a Special Land Use.
2. Use of Professional Consultants:
 - a. The County may retain the services of professional consultants in reviewing, processing, and acting upon applications, including, but not limited to, engineers, attorneys, planners, environmental specialists, and other consultants with skills relevant to approving facilities arising under this Ordinance. Any applicant for a Utility Scale Solar Energy Facility shall reimburse the County for staff time expended, and shall reimburse the County for the cost to the County charged by any consultant retained by the County, in the administration, investigation, and processing of such application.
 - b. Preliminary Cost Reimbursement Agreement. At the time an application for a facility is filed with the County, the applicant shall execute for the benefit of the County an agreement agreeing to pay and providing adequate security guaranteeing payment of the cost of the investigation, review, and processing of the application,

including without limitation by way of enumeration, legal, engineering, acoustical, planning, environmental, and staff administrative costs. The agreement and the security shall be in form and substance acceptable to the County. The County shall not begin processing the application until the preliminary cost reimbursement agreement is approved and signed and until the required security is provided to the County.

3. Site Plan Drawing and Supporting Materials: All applications for a Utility Scale Solar Energy Facility must be accompanied by a detailed site plan, drawn to scale with dimensions and certified by a registered engineer licensed by the State of Michigan. The site plan shall list the number of fenced acres on which the proposed facility will be located in county-zoned townships and shall include a version of the site plan formatted in the KMZ (Keyhole Markup Language Zipped) file format. In addition to the requirements for a site plan contained in the County Zoning Ordinance, these materials shall also contain the following information:
 - a. Vicinity map showing the location of all surrounding land uses.
 - b. All lot lines and dimensions, including a legal description of each lot or parcel comprising the Utility Scale Solar Energy Facility.
 - c. Names of owners of each lot or parcel that is proposed to be within the Utility Scale Solar Energy Facility and other parcels within 300 feet.
 - d. Horizontal and vertical (elevation) scale drawings with dimensions that show the locations and heights of the proposed Solar Array(s), buildings, structures, above ground structures and utilities on the property.
 - e. Setbacks per Section 15.02.9.7.
 - f. Photos of current condition of land, and a written description of soil conditions and other land features as of the time of the application. This is also to be included with the Decommissioning Plan.

- g. Location of all existing utility easements on record and available tile field maps and other types of drainage systems within the Utility Scale Solar Energy Facility. Electrical lines shall be clearly defined with information whether lines are overhead or underground.
- h. Access driveways within and to the Utility Scale Solar Energy Facility, together with a detailed narrative regarding dimensions, composition, and maintenance of each proposed driveway; all access drives shall be subject to the Huron County Road Commission or Michigan Department of Transportation approval, as appropriate, and shall be planned so as to minimize the use of lands for that purpose.
- i. Planned security measures to prevent unauthorized trespass and access and to warn of potential dangers during construction, operation, removal, maintenance, or repair of the Utility Scale Solar Energy Facility.
- j. A written description of the maintenance program to be used for the Solar Array(s) and other components of the Utility Scale Solar Energy Facility, including a decommissioning plan and removal procedures. The description shall include design of site, construction plan, types, and sizes of panels with description including materials composing panels, and number of panels.
- k. Safety measures to neighboring properties or roadways.
- l. A glare study shall be conducted by a third-party qualified professional to determine if glare from the Utility Scale Solar Energy Facility will be visible from nearby residences and roadways. The study shall consider the changing position of the sun throughout the day and year.
- m. A Phase I Environmental Site Assessment.
- n. If the following information is not included in the Phase I Environmental Site Assessment, an additional environmental report describing the environmental impact of the Utility Scale Solar

Energy Facility, including, but not limited to, a review of the following factors:

- i. Impact on air quality.
- ii. Impact by sound caused by the Utility Scale Solar Energy Facility. A modelling study shall be provided to show compliance with ordinance sound requirements at project boundaries. This study shall include sound isolines extending from the sound source to the property lines.
- iii. Impact on utilities and infrastructure.
- iv. Impact on wildlife.
- v. Effects on flood plains and wetlands.
- vi. Identify all woodlots in each Utility Scale Solar Energy Facility.
- vii. Unique farmlands or soils.
- viii. Areas of aesthetic or historical importance.
- ix. Archeological or cultural concerns.
- o. A written description of measures to be taken to support the flow of rainwater throughout the Utility Scale Solar Energy Facility, including any measures to promote the growth of vegetation beneath the Solar Array(s) and/or otherwise limit the impacts of storm water runoff. The measures shall be subject to the approval of the Huron County Drain Commissioner.
- p. A written report describing the economic impact to Huron County and all power output and electrical energy capacity to be generated to the electrical grid by the Utility Scale Solar Energy Facility. This report shall include estimated improvement values.
- q. Any other environmental factors typically evaluated by other members of the Commercial Energy industry when evaluating locations for a proposed power-generating facility.
- r. Application Bond: A Permit Performance Bond or other payment guarantee acceptable to the County shall be submitted to the County by the applicant when the applicant applies for a Special Land Use Permit for a Utility Scale Solar Energy Facility. The

monetary amount of the bond shall be estimated by the County to cover all reasonable costs and expenses associated with the Special Land Use Permit review and approval process, which costs shall include, but are not limited to, reasonable fees of the County Attorney, County Planner, County Engineer, as well as costs for any reports or studies that reasonably relate to the zoning review process for the application. Such bond amount shall be in addition to any filing or application fees established by resolution. At any point during the Special Land Use Permit review process, the County may require that the applicant increase the amount of the bond if the existing bond amount submitted by the applicant is deemed insufficient by the County. If the applicant refuses to so increase the bond amount promptly, the Special Land Use Permit process shall cease unless and until the applicant increases the amount of the bond. Any applicable bonding resolutions or other ordinances adopted by the County must also be complied with by the applicant.

- s. A post construction “as built” to scale drawing shall be submitted to the Zoning Administrator for compliance.
- t. Abandonment and Decommissioning plan. That plan shall include photos of current condition of land. See section 15.02.9.O. “Abandonment and Decommissioning”.

15.02.9.3. Compliance with the State Building Code and the National Electrical Safety Code: Construction of a Utility Scale Solar Energy Facility shall comply with the National Electric Safety Code (as amended) and the State Construction Codes, as administered and enforced by the County Building and Zoning Department as a condition of any Special Land Use Permit.

15.02.9.4. Certified Solar Array Components of a Solar Array shall be approved by the Institute of Electrical and Electronics Engineers (“IEEE”), Electronic Testing Laboratories (“ETL”), United Laboratories (“UL

Listed” equipment), or other similar certification organization acceptable to the County Planning Commission.

15.02.9.5. Project Area:

1. The number of total acres, directly dedicated to solar arrays allowed by Special Use Permits to be used as Utility Scale Solar Energy Facilities in all agricultural or industrial zones in those townships zoned by the County, shall not exceed 15,000 combined acres. Acreage for this purpose shall be defined by the number of acres of area directly dedicated to fenced solar arrays within parcels leased, contracted, or purchased by the Special Use Permit applicant for the purpose of installing a Utility Scale Solar Energy Facility. The Planning Commission shall deny any Special Use Permit application that requests a number of acres that, when added to all other acres in the County permitted for such use, exceeds 15,000 acres.
2. The general Zoning Ordinance provision limiting coverage to 15% of lot size shall not be applied to the construction of a Utility Scale Solar Energy Facility, i.e., there shall be no percentage limit to the area of construction within a parcel that has been approved for construction of a Utility Scale Solar Energy Facility, so long as applicable setbacks are maintained.

15.02.9.6. Height:

1. The maximum height of a Solar Array shall generally not exceed twenty-five (25) feet at full tilt from the ground level under each individual solar panel to the highest point of each panel, except as follows. Land surface undulations and swales may be factored into height measurements so that no more than 50% of the array shall exceed the twenty-five (25) feet height limitation.

2. Other collection devices (not including the Solar Array), accessory structures, and other components or buildings of the Utility Scale Solar Energy Facility, shall not exceed the maximum building height permitted within the district in which that Utility Scale Solar Energy Facility is located, at any location on the property. The height shall be measured from the natural grade at the base of the device, component or building measured.

15.02.9.7. Setbacks. The following are minimum requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

1. For occupied community buildings and dwellings on nonparticipating properties, the setback distance shall be 300 feet from the nearest point on the outer wall.
2. From public road rights-of-way, the setback distance shall be 50 feet measured from the nearest edge of a public road right-of-way.
3. For nonparticipating parcels, the setback distance shall be 50 feet measured from the nearest shared property line.
4. The setback requirements for this section shall not apply to property boundaries where the applicable adjoining property owner(s) have provided a written waiver of this requirement in recordable form and recorded it with the County Register of Deeds.
5. Fencing and other aspects of the landscaping and screening/buffering plan as noted in Section 15.02.9.9 (Screening/Security), may be situated within the setback. The Utility Scale Solar Energy Facility operator shall maintain grounds located within setbacks, either through their own maintenance organization or by allowing the property owner to farm the land.

6. A Utility Scale Solar Energy Facility shall in all other respects comply with Sections 9.01 and 9.02 of the Zoning Ordinance. Property line setbacks under this section do not apply to contiguous participating parcels.
- 15.02.9.8. Pre-existing Tile Fields: The System Applicant, Owner of Facility, or Operator shall not disturb or damage any existing tile field or other drainage system within the Utility Scale Solar Energy Facility, unless there is a prior agreement to the contrary with the Owner of the Land.
- 15.02.9.9. Screening/Security: The Special Land Use application shall include a proposed landscaping, fencing, and screening/buffering plan. This plan shall be reviewed through the Special Land Use approval process to assure that the proposed facility is appropriately landscaped in relation to adjacent land uses and road rights-of-way. The use of berms and/or evergreen plantings along the property lines adjacent to residential-zoned or developed parcels may be required as a buffer by the Planning Commission. In any event, a Utility Scale Solar Energy Facility shall be completely enclosed by perimeter fencing to restrict unauthorized access. Location of such fencing shall be subject to approval of the County Planning Commission. Fencing shall be compliant with North American Electric Reliability Corporation standards.
- 15.02.9.10. Signage: There shall be a name and emergency telephone number posted on the fence, at all times, of the person(s) responsible for maintenance and emergencies. Signage of the facility shall in all other instances be governed by the County's general Zoning Ordinance. Signage shall be placed on fencing facing public road rights-of-way and other locations designated by the Planning Commission as part of the site plan review process.

- 15.02.9.11. Sound: No component of any Solar Energy System shall emit sound exceeding 55dBa Leq (1 hour) at the nearest outer wall of the nearest dwelling or community building located on an adjacent nonparticipating property. Sound testing, or industry equipment documentation documenting sound emissions, required for each application, shall be performed by a firm approved by the County and paid by the Applicant.
- 15.02.9.12. Lighting: All lighting for parking lots, driveways, external illumination of buildings, or the illumination of signs shall be directed away from and be shielded from adjacent properties and shall be so arranged as to not adversely affect driver visibility on adjacent public roads.
- 15.02.9.13. Distribution, Transmission, and Interconnection: The electrical collection system shall be placed underground within the interior of each participating parcel at a minimum depth of five (5) feet when placed outside of the fenced Utility Scale Solar Energy Facility. Any communication system lines shall be placed underground to a minimum depth of four (4) feet when placed outside of the fenced Utility Scale Solar Energy Facility. The final location of the electrical collection system installation shall be identified by GPS location when placed outside of a fenced Utility Scale Solar Energy Facility. The actual installed burial depth of underground wiring shall be verified by the developer of the Utility Scale Solar Energy Facility. The developer shall provide certification from the installing contractor of the actual installed burial depth of all underground wiring. Such certification shall be under the penalty of perjury. The collection system may be placed overhead, as necessary, with County Planning Commission approval.
- 15.02.9.14. Energy Storage System: Utility-scale Solar Energy Systems shall not include Battery Energy Storage Systems as a component. Incidental batteries for backing up electronic control, communications, and

safety systems are permissible. The same parcel may contain both a Utility-scale solar energy system and a Battery Energy Storage System, but each must be permitted under a separate Special Use Permit. Each permit shall reference the other as appropriate.

15.02.9.15. Abandonment and Decommissioning: When the operational life of the project has ceased, or at the time the project is declared abandoned as determined by the Zoning Administrator, the Facility Owner/Operator shall perform decommissioning and removal of the Utility Scale Solar Energy Facility and all its components per the requirements of the approved decommissioning plan.

1. The Applicant shall prepare a decommissioning plan and submit it to the Planning Commission for review and approval prior to issuance of the Special Land Use Permit. The plan shall include an estimated cost of decommissioning and shall include or describe any agreement with the landowner regarding equipment removal or alteration to the land upon termination of the lease. Under this plan, all structures and facilities shall be removed, including any structures below-grade (not including buried cables), and removed offsite for disposal. No concrete, piping and other materials may be left in place. Any Solar Array or combination of Photovoltaic Devices that become an Abandoned Solar Energy System shall be removed under the decommissioning plan.
2. Following the completion of the decommissioning, the Facility Owner/Operator shall conduct a Phase I environmental site assessment similar to the one required at the beginning of the Utility Scale Solar Energy Facility's operation, and send the results to the Zoning Administrator.
3. The ground must be restored to its original condition as near as practical within one hundred eighty (180) days of becoming an

Abandoned Solar Energy System or any components thereof. Two exceptions to the 180-day period:

- a. An exception to this requirement shall be granted by the County Planning Commission if the Utility Scale Solar Energy Facility operator provides reasonable justification for an extension, or
 - b. An exception to this requirement shall be granted for those conditions that the landowner provides written consent to remain the same or to provide a designated delay beyond the 180-day period. Any costs incurred by the County in pursuing such activities shall be at the expense of the Applicant/Facility Owner, including the Applicant/Facility Owner's continuing restoration security as provided by this section.
4. If applicable, any green belt vegetation shall be removed unless the landowner opts to have it remain.
 5. Photos of the original condition and lay of the land must be included in the application.
 6. A performance bond or equivalent financial instrument shall be posted in an amount determined by the County (to be utilized in the event the decommissioning plan needs to be enforced with respect to removal, site restoration, etc.). The bond shall be in favor of Huron County, and may be provided jointly as a single instrument for multiple townships within a Solar Energy System, provided that any such single instrument shall be in an amount of at least \$1 million and shall contain a replenishment obligation. The replenishment obligation shall be satisfied with other additional documentation determined by the County, if the bond is not replenishable. The

County reserves the right to review the decommissioning plan every 5 years, and revise requirements as necessary.

7. The Decommissioning Plan shall include provisions for recycling.
 8. If any Utility Scale Solar Energy Facility is shut down for 180 days or more, it shall be decommissioned. The Facility Owner/Operator may request an extension, provided they provide documented reasons for the shut down and the reason for the extension request. The Planning Commission will be responsible for approving such an extension.
- 15.02.9.16. Health and Safety: The Planning Commission shall not recommend for approval any Utility Scale Solar Energy Facility Special Land Use Permit if it finds the Utility Scale Solar Energy Facility will pose an unreasonable safety hazard to the occupants of any surrounding properties or area wildlife.
 - 15.02.9.17. Inspection: The County Zoning Administrator shall have the right to inspect the premises on which a Utility Scale Solar Energy Facility is located, with a 48-hour notice of planned inspection to the operator of the facility. The County may hire one or more consultants to assist with any such inspections, at the expense of the Facility Owner/Operator.
 - 15.02.9.18. Performance Reports: Upon request by the County Planning Commission, but not more frequently than annually, the Facility Owner/Operator shall submit a performance report to the Planning Commission.
 - 15.02.9.19. Maintenance and Repairs: Each Utility Scale Solar Energy Facility must always be kept and maintained in good repair and condition.

1. The Facility Owner/Operator shall keep all sites within the Utility Scale Solar Energy Facility neat, clean, and free of refuse, waste, or unsightly, hazardous, or unsanitary conditions.
 2. If the County Zoning Administrator determines that a Solar Energy System fails at any time to meet the requirements of this Ordinance and the Special Land Use Permit, or that it poses a potential unreasonable safety hazard, the Facility Owner/Operator shall shut down the Utility Scale Solar Energy Facility within forty-eight (48) hours after notice by the Zoning Administrator, and may not operate, start, or restart the Utility Scale Solar Energy Facility until the condition has been corrected.
 3. Upon request by the County Planning Commission, but not more frequently than annually, the Facility Owner/Operator shall submit a repairs and improvements report to the Planning Commission. Such report shall include an update of any incomplete repairs.
- 15.02.9.20. Roads: Any material damage to a public road located within the County resulting from the construction, maintenance, or operation of a Utility Scale Solar Energy Facility shall be repaired at the Facility Owner/Operator's expense. In addition, the Facility Owner/Operator shall submit to either the Road Commission or Michigan Department of Transportation (as appropriate) a description of the routes to be used by construction and delivery vehicles and any road improvements that will be necessary to accommodate construction vehicles, equipment or other deliveries. Any improvement projects must be approved by the appropriate agencies.
- 15.02.9.21. Conditions: The Planning Commission may impose additional reasonable conditions on the approval of a Utility Scale Solar Energy Facility as a Special Land Use.

- 15.02.9.22. Completion of Construction: The construction of any Utility Scale Solar Energy Facility must commence within a period of one (1) year from the date that a Special Land Use Permit is granted, and must be completed within a period of one (1) consecutive year from the date a Special Land Use Permit is granted. The Planning Commission may approve an extension for either term upon showing of good cause.
- 15.02.9.23. Complaint Resolution Process: The Complaint Resolution Process in Section 7.01 of the Zoning Ordinance applies. If the complainant fails to reasonably cooperate with the County's investigation of the complaint, the complaint process shall be terminated. Examples of a failure to reasonably cooperate in the investigation shall include, but not be limited to, failure of the complainant to allow and provide access to the complainant's property.
- 15.02.9.24. Transfer of Facility Ownership/Operation: The County Planning Commission shall be notified of any intent to transfer the ownership of the Utility Scale Solar Energy Facility and reassignment of a Special Land Use Permit. The current facility owner or operator shall provide written notice to the County Planning Commission at least sixty (60) days prior to when an agreement to change the ownership of the Facility becomes effective. This notice shall inform the County Planning Commission of the intended transfer of control of the Utility Scale Solar Energy Facility. Such an instrument or agreement shall include an express statement that the new owner or operator of the Utility Scale Solar Energy Facility shall not be permitted to operate that Facility until compliance with the terms of this ordinance have been met, including requirements for surety bonds.
- 15.02.9.25. Litigation: Any litigation, by the County against the Applicant/Facility Owner/Operator or by the Applicant/Facility Owner/Operator against the County, shall be litigated in the State of Michigan.
- 15.02.9.26. Enforcement:

1. Any person, firm or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor or civil infraction, and the penalties and manner in which this Ordinance shall be enforced shall be governed by Article XXII (Enforcement, Penalties, and Other Remedies) of the general Zoning Ordinance of the County of Huron.
2. False report of official complaint: any person who intentionally makes a false complaint or intentionally causes a false report of a complaint of a violation of this ordinance to the official in charge of enforcing this ordinance, knowing the report is false, is guilty of a civil infraction, and upon a finding of responsibility is subject to a fine of up to \$500.00 for each violation and all costs associated with the investigation and prosecution thereof.

DRAFT

BATTERY ENERGY STORAGE SYSTEM ORDINANCE

9/16/2024 DRAFT

Insert the battery storage ordinance at section 15.02.10 of the Zoning Ordinance

SECTION 15.02

15.02.10. Battery Energy Storage System (BESS)

15.02.10.1. Purpose and Intent: The purpose and intent of this ordinance is to establish standards for the siting, installation, operation, and repair of commercial-scale Battery Energy Storage System Facilities within the Agricultural and Industrial Districts.

15.02.10.2. Special Use Permit Requirement: A Special Use Permit issued from the Planning Commission shall be required for any facility containing a commercial-scale Battery Energy Storage System to be installed and operated within Agricultural and Industrial Districts zoned by the County.

15.02.10.3 Use of Professional Consultants:

1. The County may retain the services of professional consultants in reviewing, processing, and acting upon applications, including, but not limited to, engineers, attorneys, planners, environmental specialists, and other consultants with skills relevant to approving facilities arising under this Ordinance. Any applicant for a BESS shall reimburse the County for staff time expended, and shall reimburse the County for the cost to the County charged by any consultant retained by the County, in the administration, investigation, and processing of such application.

2. Preliminary Cost Reimbursement Agreement. At the time an application for a facility is filed with the County, the applicant shall execute for the benefit of the County an agreement agreeing to pay and providing adequate security guaranteeing payment of the cost of the investigation, review, and processing of the application, including without limitation by way of enumeration, legal, engineering, acoustical, planning, environmental, and staff administrative costs. The agreement and the security shall be in form and substance acceptable to the County. The County shall not begin processing the application until the preliminary cost reimbursement agreement is approved and signed and until the required security is provided to the County.

15.02.10.4 The Special Use Permit application shall include the following:

1. Phase 1 Environmental Site Assessment.
2. Landscaping, fencing, and screening/buffering plan. This plan shall be reviewed through the Special Land Use approval process to assure that the proposed facility is appropriately landscaped in relation to adjacent land uses and road rights-of-way. The use of berms and/or evergreen plantings along the property lines adjacent to residential-zoned or developed parcels may be required as a buffer by the Planning Commission. In any event, a BESS shall be completely enclosed by perimeter fencing to restrict unauthorized access. Location of such fencing shall be subject to approval of the County Planning Commission. Fencing shall be compliant with North American Electric Reliability Corporation standards.

15.02.10.5. Definition of Battery Energy Storage System: Rechargeable electrical system that allows storage of energy from on-site or nearby commercial-scale power generating systems or from the public utility electric grid. Commercial-scale shall be defined as those systems rated for at least 10 megawatts.

15.02.10.6. System Standard: Battery Energy Storage Systems shall be designed and constructed in accordance with the NFPA (National Fire Protection Association) 855 standard.

15.02.10.7. Certified Components: Components of the Battery Energy Storage System shall be approved prior to commencement of operation, as defined by this section. The system and its components and equipment shall be listed by a nationally recognized testing laboratory to UL (Underwriters Laboratories) 9540 (Standard for battery energy storage systems and Equipment) with subcomponents meeting each of the following standards as applicable:

1. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),
2. UL 1642 (Standard for Lithium Batteries),
3. UL 1741 or UL 62109 (inverters and power converters),
4. Certified under the applicable electrical, building, and fire prevention codes as required.
5. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.

15.02.10.8. Safety:

1. The Special Use Permit applicant shall include a detailed safety plan in the Special Use Permit application. Such a plan shall include, but not be limited to,
 - a. Preliminary design with locations and descriptive details regarding components relating to fire prevention and detection, and to explosion control,
 - b. information regarding equipment designed for providing proper temperature control recommended for safe operation of batteries,
 - c. Preliminary designs do not need to include information about component manufacturers.
2. The Battery Energy Storage System shall include the following sub-systems:
 - a. Hazard detection system.
 - b. Explosion protection system or construction design.
3. Structures containing the Battery Energy Storage System shall be surrounded by bollards installed in such a manner to prevent vehicle impacts to the structure.
4. The BESS Owner or Operator shall provide an Emergency Operations Plan and orientation for the local fire department and the County Emergency Services before the beginning of commercial operation of the facility. The BESS Owner/Operator shall coordinate with the local fire department and the County Emergency Services regarding further training and best practices for fighting fires.
5. The BESS Owner/Operator shall establish a Fire Department access system for emergency off-hours access by emergency personnel. The

BESS Owner/Operator shall also maintain access to the Battery Energy Storage System by snow-plowing such pathways in a timely manner.

6. The Battery Energy Storage System shall be adequately signed according to American National Standards Institute (ANSI) Z535, section 4.7.4. This shall include providing emergency responders information about the batteries and other hazardous contents and potential risks within the system.
7. The Planning Commission may require, as a condition of the Special Use Permit, for the Owner of the BESS to provide a specific amount of funding to local and/or County firefighting entities for any special firefighting equipment designed to extinguish the type of fire that may be involved with the type of batteries used in the Battery Energy Storage System.

15.02.10.9. Setbacks. The following are minimum requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

1. For occupied community buildings and dwellings on nonparticipating properties, the setback distance shall be 300 feet from the nearest point on the outer wall.
2. From public road rights-of-way, the setback distance shall be 50 feet measured from the nearest edge of a public road right-of-way.
3. For nonparticipating parcels, the setback distance shall be 50 feet measured from the nearest shared property line.
4. The setback requirements for this section shall not apply to property boundaries where the applicable adjoining property owner(s) have

provided a written waiver of this requirement in recordable form and recorded it with the County Register of Deeds.

5. Per the approved landscaping, fencing, and screening/buffering plan from the Special Use Permit application, as modified by any Planning Commission adjustments, fencing and other aspects of the landscaping and screening/buffering plan may be situated within the setback. The BESS Operator shall maintain grounds located within setbacks, either through their own maintenance organization or by allowing the property owner to farm the land.
6. The general Zoning Ordinance provision limiting coverage to 15% of lot size shall not be applied to the construction of a BESS, i.e., there shall be no percentage limit to the area of construction within a parcel that has been approved for construction of a Battery Energy Storage System Facility, so long as applicable setbacks are maintained.
7. A BESS shall in all other respects comply with Sections 9.01 and 9.02 of the Zoning Ordinance.

15.02.10.10. Sound: No component of any Battery Energy Storage System shall emit sound exceeding 55dBA Leq (1 hour) at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property.

1. "Component" shall include any equipment from the Battery Energy Storage System prior to the end connection to the final transmission line.
2. Sound testing, or industry equipment documentation documenting sound emissions, required for each application, shall be performed by a firm approved by the County and paid by the Applicant.

15.02.10.11. Final Design: The final design of the Battery Energy Storage System shall be submitted prior to the beginning of commercial operation of the facility.

15.02.10.12. Completion of Construction: The construction of any Utility Scale Solar Energy Facility must commence within a period of one (1) year from the date that a Special Land Use Permit is granted, and must be completed within a period of one (1) consecutive year from the date a Special Land Use Permit is granted. The Planning Commission may approve an extension for either term upon showing of good cause.

15.02.10.13. Abandonment and Decommissioning: When the operational life of the project has ceased, or at the time the project is declared abandoned as determined by the Zoning Administrator, the BESS Owner/Operator shall perform decommissioning and removal of the BESS and all its components per the requirements of the approved decommissioning plan.

1. The Applicant shall prepare a decommissioning plan and submit it to the Planning Commission for review and approval prior to issuance of the Special Land Use Permit. The plan shall include an estimated cost of decommissioning and shall include or describe any agreement with the landowner regarding equipment removal or alteration to the land upon termination of the lease. Under this plan, all structures and facilities shall be removed, including any structures below-grade (not including buried cables), and removed offsite for disposal. No concrete, piping and other materials may be left in place.
2. Following the completion of the decommissioning, the Facility Owner/Operator shall conduct a Phase I environmental site assessment similar to the one required at the beginning of the BESS's operation, and send the results to the Zoning Administrator.

3. The ground must be restored to its original condition as near as practical within one hundred eighty (180) days of becoming an abandoned BESS or any components thereof. Two exceptions to the 180-day period:
 - a. An exception to this requirement shall be granted by the County Planning Commission if the BESS Operator provides reasonable justification for an extension, or
 - b. An exception to this requirement shall be granted for those conditions that the landowner provides written consent to remain the same or to provide a designated delay beyond the 180-day period. Any costs incurred by the County in pursuing such activities shall be at the expense of the Applicant/Facility Owner, including the Applicant/Facility Owner's continuing restoration security as provided by this section.
4. If applicable, any green belt vegetation shall be removed unless the landowner opts to have it remain.
5. Photos of the original condition and lay of the land must be included in the application.
6. A performance bond or equivalent financial instrument shall be posted in an amount determined by the County (to be utilized in the event the decommissioning plan needs to be enforced with respect to removal, site restoration, etc.). The bond shall be in favor of Huron County, and may be provided jointly as a single instrument for multiple townships within a BESS, provided that any such single instrument shall be in an amount of at least \$1 million and shall contain a replenishment obligation. The replenishment obligation shall be satisfied with other additional documentation determined by

the County, if the bond is not replenishable. The County reserves the right to review the decommissioning plan every 5 years, and revise requirements as necessary.

7. The Decommissioning Plan shall include provisions for recycling.
8. If any BESS is shut down for 180 days or more, it shall be decommissioned. The Facility Owner/Operator may request an extension, provided they provide documented reasons for the shut down and the reason for the extension request. The Planning Commission will be responsible for approving such an extension.

15.02.10.14. Transfer of Facility Ownership/Operation: The County Planning Commission shall be notified of any intent to transfer the ownership of the Battery Energy Storage System and reassignment of a Special Land Use Permit. The current facility owner or operator shall provide written notice to the County Planning Commission at least sixty (60) days prior to when an agreement to change the ownership of the BESS becomes effective. This notice shall inform the County Planning Commission of the intended transfer of control of the Battery Energy Storage System. Such an instrument or agreement shall include an express statement that the new owner or operator of the BESS shall not be permitted to operate that BESS until compliance with the terms of this ordinance have been met, including requirements for surety bonds.

15.02.10.15. Conditions: The Planning Commission may impose additional reasonable conditions for the approval of a Battery Energy Storage System as a Special Land Use.

15.02.10.16. Ordinance Requirements: Requirements imposed by this ordinance shall be in addition to any further requirements imposed on Battery Energy Storage Systems by other County ordinances. If there is a conflict between any of these provisions with another ordinance, the language of the more restrictive ordinance shall prevail.

15.02.10.17. Complaint Resolution Process: The Complaint Resolution Process in Section 7.01 of the Zoning Ordinance applies. If the complainant fails to reasonably cooperate with the County's investigation of the complaint, the complaint process shall be terminated. Examples of a failure to reasonably cooperate in the investigation shall include, but not be limited to, failure of the complainant to allow and provide access to the complainant's property.

15.02.10.18. Litigation: Any litigation, by the County against the Applicant/Facility Owner/Operator or by the Applicant/Facility Owner/Operator against the County, shall be litigated in the State of Michigan.

15.02.10.19. Enforcement:

1. Any person, firm or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor or civil infraction, and the penalties and manner in which this Ordinance shall be enforced shall be governed by Article XXII (Enforcement, Penalties, and Other Remedies) of the general Zoning Ordinance of the County of Huron.
2. The County Zoning Administrator shall have the right to inspect the premises on which a Battery Energy Storage System is located, with a 48-hour notice of planned inspection to the operator of the BESS. The County may hire one or more consultants to assist with any such inspections, at the expense of the BESS Owner/Operator.

3. False report of official complaint: any person who intentionally makes a false complaint or intentionally causes a false report of a complaint of a violation of this ordinance to the official in charge of enforcing this ordinance, knowing the report is false, is guilty of a civil infraction, and upon a finding of responsibility is subject to a fine of up to \$500.00 for each violation and all costs associated with the investigation and prosecution thereof.
4. If the County Zoning Administrator determines that a Battery Energy Storage System fails at any time to meet the requirements of this Ordinance and the Special Land Use Permit, or that it poses a potential unreasonable safety hazard, the Facility Owner/Operator shall shut down the Battery Energy Storage System within forty-eight (48) hours after notice by the Zoning Administrator, and may not operate, start, or restart the Battery Energy Storage System until the condition has been corrected.
5. “Unreasonable Safety Hazard” in subsection O.4. of this section shall be defined as any condition which could reasonably be expected to create, cause, or compound the substantial likelihood that death, illness, or personal injury may occur to any member of the general public, including but not limited to trespassers or emergency services personnel. Adherence by the Facility Owner/Operator or occupants to industry standards for safeguarding against such risks shall be taken into consideration in determining whether a condition poses an unreasonable safety hazard.