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SECTION 3.50 – OFF-SITE BATTERY ENERGY STORAGE SYSTEMS (BESS)

- a) *Purpose.* The purpose of this Section is to establish minimum requirements for the construction, erection, placement, location, maintenance, modification, operation, and decommissioning of off-site battery energy storage systems in Wayland Township in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands, residential areas, endangered species habitats, conservation lands, and other sensitive lands.
- b) *Definitions.* The following definitions apply only to the provisions of this Section.
- 1) Augmentation: The process of supplementing or replacing some or all of the system components to maintain the nameplate capacity (measured in megawatts).
 - 2) Battery Energy Storage System (BESS): One or more devices, assembled together within a purpose-built container, capable of storing energy to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or electric motor vehicle.
 - 3) Battery Energy Storage System, Off-Site: A battery energy storage system for the primary purpose of off-site use through the electrical grid.
 - 4) Battery Energy Storage System, On-Site: A battery energy storage system that is intended primarily to serve the electricity needs of the applicant property but may, at times, discharge into the electrical grid.
 - 5) Battery Energy Storage System, Large Off-Site: A battery energy storage system that is a principal use (or co-located with a second principal use) and that is designed and built to connect to the transmission grid with a nameplate capacity of 50 megawatts or more.
 - 6) Battery Energy Storage System, Small Off-Site: A battery energy storage system that is a principal use (or co-located with a second principal use) and that is designed and built to connect into the distribution or transmission grid with a nameplate capacity of less than 50 megawatts.
 - 7) Decommissioning: The process of removing equipment and other infrastructure

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- associated with a project and restoring the site for viable reuse consistent with the zoning district.
- 8) Non-Participating Property: Real property that is adjacent to a participating property but is not a participating property.
 - 9) Participating Property: An energy storage system host property or any real property that is the subject of an agreement that provides for the payment of compensation to the landowner from the system owner (or affiliate) regardless of whether any part of a system is constructed on the property.
 - 10) Repowering: The process of reconfiguring, supplementing or replacing some or all of the system components to increase the nameplate capacity (measured in megawatts).
- c) *Applicability.*
- 1) Off-site battery energy storage systems, small shall be allowed as a special land use in the I-1 Industrial Zoning District.
 - 2) Off-site battery energy storage systems, large shall be allowed as a special land use in the I-1 Industrial Zoning District.
- d) *Development Requirements for Off-Site Battery Energy Storage Systems, Small & Large.*
- 1) *Setbacks.* The following minimum setbacks shall be required. Setbacks are measured from the nearest energy storage system structure to the nearest point on the associated item:
 - i. 100 feet from any property line of a non-participating property.
 - ii. 300 feet from the nearest point on the outer wall of a dwelling on nonparticipating property.
 - iii. 50 feet measured from the nearest edge of a public road right-of-way.
 - 2) *Height.* The height of battery energy storage system purpose-built containers shall not exceed a height of 16 ft, as measured from the natural grade of the property beneath the container, and shall not be stacked above the height of

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a single purpose-built container.

- 3) *Fencing.* The system shall be completely enclosed with fencing in compliance with the latest version of the National Electrical Safety Code or any applicable successor standard approved by the Michigan Public Service Commission.
- 4) *Sound.* The system may not generate a maximum sound in excess of 55 average hourly decibels as measured at the property line of an adjacent non-participating property. Decibel modeling shall use the A-weighted scale designed by the American National Standards Institute. The Planning Commission may require the applicant to provide a sound study as part of the special land use process.
- 5) *Lighting.* The system must implement dark sky-friendly lighting solutions.
- 6) *Safety Signage.* Signs in compliance with NFPA 70/70E, or any applicable successor code in place at the time of application for approval, shall be provided. Additionally, signage shall be provided per NFPA 855 7.4.4, or any applicable successor code in place at the time of application for approval, including information on the system type and technology, special hazards, fire suppression system, and 24-hour emergency contact information, and reach back phone number. A clearly visibly warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

Additional signage may be permitted or required by the Planning Commission as is necessary to ensure the safe operation of the system.

- 7) *Installation.* The system shall be installed in compliance with NFPA 855 – *Standard for the Installation of Stationary Energy Storage Systems* or any applicable successor code adopted by the Michigan Public Service Commission in place at the time of application for approval.
- 8) *Screening/Landscaping.* The Planning Commission shall require reasonable screening measures to minimize visual impacts. The Planning Commission shall determine such visual screening measures as may be required on a site-specific basis pursuant to the standards for special land use approval as specified in Section 18.03, the landscaping standards as specified in Section 3.44, and/or the standards for site plan approval as specified in Section 17.07.

In making this determination, the Planning Commission is specifically authorized to consider whether additional visual screening measures are appropriate where

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- a system is proposed to be located on property adjacent to a residential use and/or a residential zoning district. All screening/landscaping shall be properly maintained throughout the life of the project including replacement of any dead vegetation.
- 9) *Access Drive.* If the system includes an access drive(s) for maintenance purposes, the surface of the access drive(s) shall be permeable (unless on an already paved surface at the time of application for approval, such as a parking lot or former building foundation.)
 - 10) *Surface Material.* The area upon which the system is located shall not be paved with asphalt/concrete or any other surface material that is impermeable to water, other than slab foundations for structures and equipment. This shall not apply to a system located on an existing paved area such as a former building slab or an existing parking area where adequate parking remains for all other uses on the site.
 - 11) *Surface Water Runoff.* All surface water runoff created by construction and operation of the project shall be effectively managed on-site.
 - 12) *Waiver.* Because of the ever-changing technical capabilities of battery storage infrastructure and of new technology in general, the Planning Commission shall have the authority to review and consider alternatives in both the dimensional and physical requirements applicable to off-site battery energy storage systems contained in this Ordinance as part of the special land use review process.
- e) *Installation and Operational Safety Requirements for Off-Site Battery Energy Storage Systems, Small & Large.*
- 1) The system shall be designed and constructed for interconnection to a Michigan Public Service Commission or Midcontinent Independent System Operator regulated utility electrical power grid and shall be operated with such interconnection.
 - 2) The system and all foundation elements shall comply with all applicable building and electrical code requirements, and any applicable federal/state regulations. The manufacturer's engineer or another qualified engineer shall provide written certification that the design, installation (including foundations), and interconnection is compliant with the manufacturer and industry standards, all applicable local construction and electrical codes, and

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any applicable federal/state regulations.

- 3) Other than transmission or distribution lines for interconnection to the electric power grid, all electrical wiring shall be buried underground; except where the manufacturer's engineer or a qualified engineer employed by the utility that owns/operates the electrical power grid to which the system shall be interconnected certifies an underground wiring installation is not permitted by an applicable code and/or applicable federal/state regulation, with attached complete documentation supporting any such certification.
 - 4) The system shall be designed, located, and maintained so as to comply with all applicable codes and regulations.
- f) *Public Safety.* Any off-site battery energy storage system shall be required to provide an Emergency Response Plan and Fire Response Plan that demonstrate reasonable protection of the public health, welfare and safety, including but not limited to, an internal fire suppression system, an emergency shutdown procedure, a hazard mitigation analysis, and the provision of site safety plans to the Township Fire Department that include electrical, fire, smoke, and hazardous materials release, emergency response protocols and identification of typical hazards related to electrical, fire, smoke and hazardous materials pertinent to the system. Upon request, all systems shall provide first responder training at the site.
- g) *Repair and Augmentation.* In addition to repairing or replacing facility components to maintain the system, any off-site battery energy storage system may at any time be augmented without the need to submit a new site plan so long as the augmentation is within the same footprint (e.g., same dedicated use building or on footings/foundations in the same location) as the original permit. If there is a change in the energy storage system chemistry, an updated Emergency Response Plan and Fire Response Plan, including an updated hazard mitigation analysis, shall be provided. When a system is anticipated to be augmented over its lifetime by adding additional components, the applicant shall apply for the final/augmented site arrangement. A proposal to increase the size of the project footprint may be considered a new application, subject to the ordinance standards at the time of the request.

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h) *Decommissioning and Removal.*

- 1) *Decommissioning Plan.* The applicant shall submit a decommissioning plan which shall address the following:
 - a. Defined conditions upon which decommissioning will be initiated unless the applicant receives a written extension from the Township Board in a case involving an extended repair schedule for good cause.
 - b. A description as to how the useful life of the system will be determined and who will make this determination. The anticipated manner in which the project will be decommissioned, including a description of which above-grade and below-grade improvements will be removed, retained or restored for viable reuse of the property consistent with the zoning district. Pursuant to this requirement, the decommissioning plan shall be required to include that any structures up to 48 inches below-grade shall be removed for disposal.
 - c. Restoration of property to the condition prior to development of the BESS.
 - d. The timeframe for completion of decommissioning activities.
 - e. An engineer's cost estimate for all aspects of the decommissioning plan.
 - f. Description of any agreement with the landowner regarding decommissioning.
 - g. Provisions for updating the decommissioning plan.
 - h. A statement signed by the owner or operator that they take full responsibility for reclaiming the site in accordance with the decommissioning plan and the Special Land Use Permit upon cessation of use.

- 2) *Decommissioning Agreement.* Prior to the issuance of a zoning permit and a building permit, the applicant shall enter into a Decommissioning Agreement with the Township Board that outlines the specific decommissioning requirements of the project, including posting a financial instrument with the Township that provides for decommissioning of the entire project. (See Subsection 3) - Removal Cost Guarantee)

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- 3) *Removal Cost Guarantee.* The cost of removal and site restoration is the full responsibility of the applicant and/or owner/operator. In order to provide the greatest possible financial assurance that there will be sufficient funds to remove the off-site battery energy storage system and to restore the site, the following steps shall be taken:
- i. For each off-site battery energy storage system, the applicant/owner/operator shall determine an amount of money equal to the estimated removal and restoration cost. The Planning Commission shall require independent verification of the adequacy of this amount. The amount of each off-site battery energy storage system removal cost guarantee shall be 125% of the average of at least two independent demolition (removal) quotes obtained by the Township. If the quantity of quotes obtained is two, the formula shall be (quote 1 + quote 2) divided by two. Quotes shall be ordered and obtained by the Township from established demolition companies. Quotes shall not include salvage values.
 - ii. The Planning Commission may require a cash deposit, certified check, irrevocable bank letter of credit or surety bond acceptable to the Planning Commission. Such financial guarantee shall be deposited with the Township Treasurer, or with a third-party fiduciary, at the discretion of the Township, after a special land use has been approved but before construction operations begin on the off-site battery energy storage system. The Township shall be the named beneficiary of the bond that is posted.
 - iii. The security guarantee shall be updated every two years at the rate of 1.5 times CPI (consumer price index) for each year to address costs of inflation for the actual cost of decommissioning to the Township, at cost to the Applicant, and to be approved by the Planning Commission. Written proof that the security guarantee is valid shall be provided annually to the Township Clerk.
 - iv. Failure to keep such financial security in full force and effect at all times while the off-site battery energy storage system exists shall constitute a material and significant violation of any special land use approval and this Ordinance and shall be subject to any and all remedies available to

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the Township, including, but not limited to, enforcement actions, fines, revocation of the special land use approval and off-site battery energy storage system removal.

- 4) The owner of any off-site battery energy storage system may at any time:
 - i. Proceed with the decommissioning plan approved by the Township Board, and remove the system as indicated in the most recent approved plan; or
 - ii. Amend the decommissioning plan with Township Board approval, after review and recommendation by the Planning Commission, and proceed according to the revised plan.
- 5) Decommissioning of an off-site battery energy storage system must commence when the soil is dry to prevent soil compaction and must be completed within 12 months after abandonment. An off-site battery energy storage system that has not operated for 12 consecutive months shall prompt an abandonment hearing.
- 6) Restoration shall include bringing soil and topography of the land to their pre-development composition unless the Planning Commission waives any part of this requirement to ensure allowed uses upon restoration. Soil tests shall be required as part of the decommissioning plan both before development and prior to the decommissioning.
 - i) *Host Community Agreement.*
 - 1) The permit holder of any off-site battery energy storage system shall enter into a host community agreement with the Township within 90 days after issuance of the Special Land Use Permit.
 - 2) The host community agreement shall require that, upon commencement of any operation, the owner of the off-site battery energy storage system shall pay Wayland Township \$2000.00 per megawatt of nameplate capacity located within the Township.

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- 3) The payment shall be used as determined by the Township for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the Township and the permit holder within said 90 days.
- j) *Complaint Resolution.* It is the intent of this Section to provide a mechanism to address and resolve complaints:
- 1) The applicant shall develop and submit a written compliant resolution process to resolve complaints concerning the construction or operation of the off-site battery energy storage system. The compliant resolution process must be approved by the Planning Commission as a condition of approval of the Special Land Use Permit.
 - 2) During or post construction, the Township Board shall be kept apprised of all complaints and shall receive a report outlining the issues, progress and resolution of each such complaint. Such report shall be presented every 60 days by the applicant/owner to the Township Board.
 - 3) The owner/operator shall submit an annual report to the Township Board of the complaints and resolutions.
- k) *Special Land Use Permit and Site Plan Application Requirements.* Applications for Special Land Use Permit shall comply with Chapter 18 of this Ordinance. Applications for Site Plan Review shall comply with Chapter 17 of this Ordinance. Each such application shall also be subject to the following additional submission requirements:
- 1) The planned date for the start of construction and the expected duration of construction.
 - 2) A description of the system, including a site plan as described in Section 224 of the Clean and Renewable Energy Waste Reduction Act, 2008 PA 295, MCL 460.1224. The following items must be shown on the site plan:
 - i. A map of all properties upon which any component of the system or ancillary feature would be located, and all property within 1000 feet. This should indicate the location of all existing structures and identify such structures as occupied or vacant.

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- ii. Vertical elevation drawings that show the location, height and scope of the system.
 - iii. A map of any existing overhead and underground major facilities for electric, gas, telecommunications transmission within the facility and surrounding area.
 - iv. The location and size of all surface water drainage facilities, including source, volume expected, route, and course to final destination.
 - v. A map depicting the proposed facilities, adjacent properties, all structures within participating and adjacent properties, property lines, and the projected sound isolines along with the modeled sound isolines including the statutory limit.
- 3) A description of the expected use of the proposed system.
 - 4) Expected public benefits of the proposed system.
 - 5) Information on the effects of the proposed system on public health and safety.
 - 6) A description of the portion of the community where the proposed system will be located.
 - 7) The expected direct impacts of the proposed system on the environment and natural resources and how the applicant intends to address and mitigate these impacts.
 - 8) A statement and reasonable evidence that the proposed system will not commence commercial operation until it complies with applicable state and federal environmental laws, including, but not limited to, the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106.
 - 9) Evidence of consultation with the Department of Environment, Great Lakes, and Energy and other relevant state and federal agencies, including, but not limited to, the Department of Natural Resources and the Department of Agriculture and Rural Development, before submitting the application.
 - 10) The Soil and Economic Survey Report under Section 60303 of the Natural

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Resources and Environmental Protection Act, 1994 PA 451, MCL 324.60303, for Allegan County.

- 11) Interconnection queue information for the applicable regional transmission organization.
- 12) If the site of the proposed system is undeveloped land, a description of feasible alternative developed locations, including, but not limited to, vacant industrial property and brownfields, and an explanation of why they were not chosen.
- 13) If the proposed system is reasonably expected to have an impact on television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and doppler radio, a plan to minimize and mitigate that impact. Information in the plan concerning military defense radar is exempt from disclosure under the Freedom of information Act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the commission or the electric provider or independent power producer except pursuant to court order.
- 14) A storm water assessment and a plan to mitigate and repair and drainage impacts at the expense of the applicant. The applicant shall consult with the Allegan County Drain Commissioner before submitting the application and shall include evidence of those efforts in its application.
- 15) A fire response plan (FRP) that includes the following:
 - i. Evidence of consultation with the Township Fire Department and the local emergency manager to ensure that the FRP is aligned with acceptable operating procedures, capabilities, resources, etc.
 - ii. A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies.
 - iii. A description of all contingency plans to be implemented in response to the occurrence of a fire emergency.
 - iv. A commitment to review and update the FRP with the Township Fire Department, first responders, and local emergency manager at least once every year.
 - v. An analysis of whether plans to be implemented in response to a fire emergency can be fulfilled by existing local emergency response capacity. The analysis should include identification of any specific equipment or training deficiencies in local emergency response capacity and recommendations for

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measures to mitigate deficiencies.

vi. Other information the Township Fire Department finds relevant.

16) An emergency response plan (ERP) that includes the following:

- i. Evidence of consultation with local first responders and the emergency manager to ensure that the ERP is aligned with acceptable operating procedures, capabilities, resources, etc.
- ii. An identification of contingencies that would constitute a safety or security emergency (fire emergencies are to be addressed in a separate fire response plan);
- iii. Emergency response measures by contingency;
- iv. Evacuation control measures by contingency;
- v. Community notification procedures by contingency;
- vi. An identification of potential approach and departure routes to and from the facility site for police, fire, ambulance, and other emergency vehicles;
- vii. A commitment to review and update the ERP with the Township Fire Department, first responders, and local emergency manager at least once every year;
- viii. An analysis of whether plans to be implemented in response to an emergency can be fulfilled by existing local emergency response capacity, and identification of any specific equipment or training deficiencies in local emergency response capacity; and
- ix. Other information the local first responders and the emergency manager finds relevant.

17) A report detailing the sound modeling results along with mitigation plans to ensure that sound emitted from the system will remain below the statutory limit throughout the operational life of the system.

18) A mechanism to address and resolve complaints that includes the following:

- i. A written complaint resolution process to resolve complaints concerning the construction or operation of the off-site battery energy storage system.
- ii. A requirement that, during or post construction, the Township Board shall be kept apprised of all complaints and shall receive a report outlining the

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- iii. issues, progress and resolution of each such complaint. Such report shall be presented every 60 days by the applicant/owner to the Township Board.
 - iv. A requirement that the owner/operator shall submit an annual report to the Township Board of the complaints and resolutions.
- 19) Any other information regarding compliance with the requirements herein.
- l) *Administration Costs Initial Application and Ongoing.* For each battery energy storage system application, the applicant/owner/operator shall deposit into an escrow account the amount of \$15,000. The purpose of this joint escrow account is:
- i. To reimburse Wayland Township for its costs incurred to hire consultants and experts as the Township, at its sole discretion, deems desirable to examine, evaluate and verify the data and statements presented by the applicant/owner/operator.
 - ii. For the life of each off-site battery energy storage system, to cover the administrative and legal costs incurred by Wayland Township in monitoring and enforcing the owner/operator's ongoing compliance with the Ordinance. The account shall be managed as follows:
 - a. Funds can be withdrawn from this account only by the signature of a Township designee.
 - b. If at any time the balance of this account shall fall below \$5,000, the applicant/owner/operator shall replenish the account to the full amount of \$15,000.
 - c. If at any time the balance of this fund shall fall below \$1,000 for a continuous period of thirty days, the application shall be considered to have been withdrawn or tabled, or the Permit for the battery energy storage system may be terminated.
 - d. The Wayland Township designee shall be charged with monitoring the escrow account and giving quarterly reports to the Planning Commission. After the battery energy storage system has been removed and site restoration has been completed, as defined in this Ordinance, any balance remaining in this account shall be returned to the applicant/owner/operator.

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m) *Building Permit*. Prior to issuance of a Building Permit, the following information shall be provided.

- 1) Equipment specification sheets.
- 2) Identification and contact information for the installer(s) of the proposed system.
- 3) Augmentation Plan.
- 4) Approved Decommissioning Plan and Decommissioning Agreement in recordable form and acceptable to the Township Attorney.
- 5) Life expectancy of the system components including the anticipated schedule for battery replacement to maintain megawatts over the system's lifetime.
- 6) Hazard Mitigation Analysis.
- 7) Operation and Maintenance Manual.
- 8) Identification and contact information for the installer of the system.
- 9) Electrical schematic plan for the system, including disconnect devices.
- 10) An approved FRP and ERP.
- 11) An executed Community Host Agreement.
- 12) Proof of financial guarantee for decommissioning.

n) *Transfers*. No transfer in ownership of the off-site battery energy storage system shall occur prior to providing 60 days' notice to the Township and upon Township approval verifying that the new owner agrees to carry out the terms of the special land use permit and site plan approval.

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SECTION 3.51 – ON-SITE BATTERY ENERGY STORAGE SYSTEMS (BESS)

- a) On-site battery energy storage systems shall be allowed as an accessory use in all zoning districts and shall comply with the regulations applicable to accessory uses.
- b) A building permit shall be required for all on-site battery energy storage systems.
- c) On-site battery energy storage systems with an aggregate energy capacity of more than 1 megawatt are subject to additional regulations in the applicable fire code, and required documentation shall be submitted along with the building/electrical permit applications.
- d) Coverage. Lot coverage shall not exceed the otherwise permissible percentage of lot coverage for buildings in the applicable district.
- e) Setbacks. All on-site battery energy storage system structures and related structural apparatus not physically attached to a building shall satisfy the setback requirements in the applicable district.

SECTION 13.03 – USES REQUIRING A SPECIAL LAND USE PERMIT (I-1 DISTRICT)

- z) Off-Site Battery Energy Storage Systems as regulated by Section 3.50 herein.