



COMMONWEALTH OF KENTUCKY

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July 12, 2022

Kentucky State Board on Electric Generation and Transmission Siting
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RECEIVED

JUL 14 2022

PUBLIC SERVICE
COMMISSION

Re: AEUG Mason Solar's Application for
Certificate of Construction for: an
approximately 250 Megawatt Merchant Electric
Solar Generating Facility in Mason County,
Kentucky pursuant to KRS 278.700, et seq., and
807 KAR 5:110
Case No. 2021-00170

Dear Siting Board Members:

Attached is Mason County Fiscal Court Ordinance No. 22-02, adopted and enacted this date, which creates set backs and regulations pertaining to the proposed project which is the subject of this application. Any approvals of the applications should comply with the minimum standards adopted in this ordinance.

If I or the Mason County Fiscal Court need to provide further comment in this regard, please contact me by email at jestill@fwwe.law.

Best regards,


John F. Estill

JFE

cc: Hon. Owen J. McNeill
Judge Executive

COMMONWEALTH OF KENTUCKY
MASON FISCAL COURT
ORDINANCE NO. 22-02

AN ORDINANCE ADOPTING AND AFFIRMING THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE MASON COUNTY JOINT PLANNING COMMISSION PERTAINING TO THE SITING, DEVELOPMENT, CONSTRUCTION, INSTALLATION, AND DECOMMISSIONING OF SOLAR ENERGY SYSTEMS (“SES”) IN MASON COUNTY, KENTUCKY; ADOPTING THE RECOMMENDATION FOR THE AMENDMENT OF MASON FISCAL COURT ORDINANCE NO. 02-07; AND REPUBLISHING ORDINANCE NO. 02-07 TO INCORPORATE SUCH AMENDMENTS.

WHEREAS, the Mason Fiscal Court adopted a Land Use Management Ordinance, by virtue of its Ordinance No. 02-07, as subsequently amended, (hereinafter referred to as “the Ordinance”); and

WHEREAS, an interest has developed concerning the development of large scale energy projects in Mason County, a use which is not specifically dealt with by the Ordinance; and

WHEREAS, this interest has been met with considerable local opposition to the development of large-scale solar energy; and

WHEREAS, AEUG Mason Solar, LLC, has filed a Notice of Intent with the Commonwealth of Kentucky, Public Service Commission, Electric Generation and Transmission Siting Board, for a certificate pursuant to KRS 278.700, *et seq.*, to proceed with the construction of an approximately 2500 acre 250 Megawatt solar generating facility (SEE Case No. 2021-00170) in rural areas in southern Mason County. Two other solar developers have proposed separate similarly sized large scale solar facilities in the same general area of Mason County, but those developers have not sought certificates for the siting of such projects with the State agency; and

WHEREAS, the Mason County Joint Planning Commission (hereinafter referred to as “the Planning Commission”) has determined that the significance to our community of this issue warrants a text amendment to the Ordinance to clearly and unambiguously set forth the parameters of large-scale solar energy development which allow Mason County landowners to enjoy the full benefits of the reasonable use of their property while at the same time guaranteeing the protection of Mason County’s precious farmland and the responsible stewardship thereof, ensuring diligent preservation of the local environment at large, and preventing nuisance in general; and

WHEREAS, the Planning Commission conducted a properly noticed public hearing over the course of two separate nights (November 16th and 18th, 2021), during which the Planning Commission heard extensive testimony from members of the community as well as representatives from local citizens’ groups and interested solar developers, and at which hearing the Planning Commission accepted as evidence extensive written comment from the public at large; and

WHEREAS, the Planning Commission conducted a separate properly noticed public hearing on March 2, 2022, at which it heard testimony and accepted a written report from Mason County Property Valuation Administrator Troy Cracraft as to the potential tax implications to Mason County of large-scale solar energy development; and

WHEREAS, in addition to the considerable public hearings the Planning Commission has conducted, the Planning Commission has also spent over a year considering and discussing the issue of large-scale solar development in Mason County, including the visit by the members to a solar energy facility in another jurisdiction; and

WHEREAS, as the culmination of this lengthy and deliberative effort to draft a proposed ordinance that balances the rights of property owners who wish to lease their land for solar development and the rights of other property owners to the quiet enjoyment of their property free from nuisance as well as the interest of the Mason County community at large in the preservation of its precious farmland, the Planning Commission conducted a special meeting May 4, 2022, at which it voted 4 to 3 to recommend its sixth draft of the Maysville/Mason County Solar Energy Systems Ordinance with amendments (hereinafter referred to as “the Proposed Amendments”) for adoption as a text amendment to the Ordinance; and

WHEREAS, the Proposed Amendments first came before the Mason Fiscal Court (hereinafter referred to as “the Fiscal Court”) at its May 10, 2022, regular meeting; and

WHEREAS, at that meeting, the Fiscal Court considered the significance of the Proposed Amendments to our community and unanimously voted to hold a special public hearing at the Maysville Community and Technical College on May 25, 2022, so that the local citizens’ groups could communicate their concerns over the Proposed Amendments directly to the Fiscal Court and to permit the Fiscal Court to ask interested developers questions about their respective projects; and

WHEREAS, pursuant to *City of Louisville v. McDonald*, 470 S.W.2d 173 (Ky. 1971), upon motion duly made and unanimously passed, the Fiscal Court voted at said public hearing that the Proposed Amendments would be considered based upon the record compiled by the Planning Commission (including the minutes of the November 16th, 2021, the November 18th, 2021, the March 2, 2022, evidentiary hearings, the May 4, 2022, special meeting, as well as the written comments and reports accepted by the Planning Commission) all of which is filed with

the Mason County Clerk in open meeting and to be included within the minutes of the regular Fiscal Court meeting; and

WHEREAS, the Fiscal Court further unanimously resolved not to conduct a further evidentiary hearing or to accept further evidence, and to give the weight of argument rather than evidence to any statements or written summaries thereof made to the Fiscal Court, and further resolved to specifically exclude from the record and from the Fiscal Court's consideration anything said or submitted that was not already a part of the record provided to the Fiscal Court by the Planning Commission; and

WHEREAS, at said hearing, the Fiscal Court heard presentations by and asked questions of the representatives of Acciona, Innergex, and National Grid Renewables, and heard argument from representatives of Citizen's Voice of Mason County and Limestone Solar, local community groups opposing large-scale solar development and in favor of large-scale solar development, respectively; and

WHEREAS, the Fiscal Court has carefully reviewed and considered the record of the Planning Commission's proceedings and the argument made in its own May 25, 2022, special meeting;

NOW THEREFORE, THE FISCAL COURT OF MASON COUNTY, KENTUCKY, does hereby **ENTER THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDAINS** as follows:

FINDINGS OF FACT

1. Pursuant to *City of Louisville v. McDonald*, 470 S.W.2d 173 (Ky. 1971), the Fiscal Court is entitled to and in this case has unanimously resolved to decline holding a separate evidentiary hearing and, instead, has determined that the matter would be considered based upon

the record of the Mason County Joint Planning Commission (including the minutes of the November 16th, 2021, the November 18th, 2021, the March 2, 2022, evidentiary hearings, the May 4, 2022, special meeting, as well as the written comments and reports accepted by the Planning Commission) all of which is filed with the Mason County Clerk in open meeting and to be included within the minutes of the regular Fiscal Court meeting.

2. In addition to the Planning Commission's record, the Fiscal Court voted to conduct a special meeting at the Maysville Community and Technical College on May 25, 2022, so that the local citizens' groups could communicate their concerns over the Proposed Amendments directly to the Fiscal Court and so the Fiscal Court could ask interested developers questions about their respective projects, but that pursuant to the opinion in *City of Louisville v. McDonald, supra*, the Fiscal Court considers any and all such statements or written summaries thereof made at said May 25, 2022, public meeting as argument and not evidence, and further specifically excludes from the record and does not consider anything said or submitted that was not already a part of the record provided to the Fiscal Court by the Planning Commission.

3. At the said May 25, 2022, public meeting, representatives of Acciona, Innergex, and National Grid Renewables, as well as members of Limestone Solar, argued that the Proposed Amendments' setback requirements, noise restrictions, and height requirements are out of conformity with national standards and/or prohibitive to reasonable large-scale solar development. The representative of Citizen's Voice of Mason County argued that because solar energy is not a specifically permitted land use in Mason County any proposed regulation of it should come through an update to the comprehensive plan, exhorted the Fiscal Court to adopt on an emergency basis the Proposed Amendments until the comprehensive plan could be updated, and argued that pursuant to such update, noise levels should remain at the 30 dBA level in the

Proposed Amendments, that setbacks should be set at 1000 feet from a residence, a storm water plan should be required, and further advocated for an application process more in line with an application for a conditional use permit.

4. The Planning Commission found specifically that the “community is divided on the issue of industrial scale solar energy.” The Fiscal Court concurs, and finds that the proposal for large-scale solar energy projects in Mason County has been particularly divisive, with participating property owners arguing that they have the right to use their property as they see fit, and rural residents and nonparticipating property owners arguing that the proposed large-scale solar energy projects will impact their health, property values, their continued enjoyment of their property, and forever alter the rural and agricultural nature of the areas impacted.

5. Considering the extensive testimony and written statements heard by the Planning Commission, the Fiscal Court finds no reason to set aside or deviate from the Findings of Fact of the Planning Commission, and hereby adopts such Findings of Fact and incorporates same herein by reference as if set forth in full.

CONCLUSIONS OF LAW

1. The Fiscal Court is authorized by KRS 65.083(k) and KRS Chapter 100 to adopt ordinances for land use management within Mason County, including adoption of a zoning ordinance and land use classifications.

2. Pursuant to such authority, the Fiscal Court adopted its Land Use Management Ordinance, codified as Ordinance No. 02-07, creating land use regulations and adopting a land use classification map, such ordinance and the maps or land use classification charts incorporated therein having been amended from time to time.

3. Enactment of zoning ordinances is part of the police power vested in the Fiscal Court “for the protection of the health, morals, safety and general welfare of the people.” *Selligman v. Von Allmen Bros., Ky.*, 179 S.W.2d 207, at 208 (1944).

4. In response to the proposals for a number of large scale solar energy projects in Mason County as well as opposition expressed by a number of citizens to the proposed projects, the Planning Commission on its own initiative undertook consideration of the regulation of solar energy projects, pursuant to the authority of KRS 100.211(2)(a).

5. Upon a review of the record of the proceedings, the Planning Commission held a number of public hearings at which it considered testimony of interested parties, and also accepted written statements which were accepted as evidence.

6. It appears that the public hearings and the proceedings of the Planning Commission complied with KRS Chapter 100, including specifically KRS 100.207 and KRS 100.211, and all other applicable statutes.

7. That in accordance with *City of Louisville v. McDonald, supra*, it is appropriate and lawful for the Court to adopt the record of the Planning Commission without conducting separate public hearings.

8. That the Proposed Amendments are reasonable regulations pertaining to the use of real property in Mason County, Kentucky, and do not deprive any property owners of all economic, productive or beneficial use of their property. SEE *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, at 1030 (1992).

9. An appeal was filed by AEUG Mason Solar, LLC, to the Mason County Board of Adjustments disputing an administrative action opining that large scale solar energy projects

were not a permitted use with the agricultural land classifications. Such appeal was held in abeyance by agreement, and will be made moot by the adoption of this Ordinance.

10. That in addition to the Conclusions of Law above, the Fiscal Court adopts the Planning Commission's Conclusions of Law and incorporates same herein by reference as if set forth in full.

ADOPTION OF THE PROPOSED AMENDMENTS

The Fiscal Court does hereby adopt the following Proposed Amendments to its land use ordinance, codified as Ordinance No. 02-07:

415 Solar Energy Systems (SES)

415.01 PURPOSE

The purposes of this Ordinance are to:

- A. Facilitate the siting, development, construction, installation, and decommissioning of Solar Energy Systems, hereinafter referred to as SES, in Maysville and Mason County in a predictable manner that promotes and protects the safety, health and welfare of the community; and
- B. Provide a framework for the development for SES, which balances the benefits of renewable energy production and economic development with the protection of local agriculture, existing residential uses and the existing built environment, and historic, natural, and other sensitive areas.

415.02 INTENT

It is the intent of these SES regulations to provide a regulatory framework for the siting, construction and operation of SES within Maysville and Mason County consistent with the Comprehensive Plan for such jurisdiction and consistent with Section 100 (Mission Statement) and Section 202 (Purpose).

415.03 APPLICABILITY

The provisions of this Section are applicable to those districts which permit utility scale SES within the City of Maysville and Mason County, Kentucky, and governs the siting of utility scale SES and related substations, maintenance facilities and other accessory facilities, as defined, that are ancillary to utility scale SES. Any reference to applicant, operator or successor

is intended to refer to an entity that is a responsible party in terms of being continually required to abide by the provisions of this Chapter and similarly is bound by any agreement entered into with the City of Maysville and Mason County. Routine maintenance and repair, including the replacement of solar panels, which does not increase the SES footprint or modifications to an existing SES alone or in combination that increases the total SES footprint by no more than 5% of the original footprint does not require subsequent applications under this Ordinance.

415.04 PROHIBITION

No entity or applicant shall construct, operate, or locate an utility scale SES within the City of Maysville or Mason County, Kentucky, without first having applied for and obtained a permit under this Section 415 and having fully complied with the provisions hereof.

415.05 CONFLICT WITH OTHER REGULATIONS

Nothing in this Chapter is intended to preempt other applicable state and federal laws or regulations, including compliance with all Federal Aviation Administration rules and regulations. Nor are they intended to interfere with, abrogate, or annul any other ordinance, rule, or regulation, statute or other provisions of law. In the event that any provision of these regulations imposes restrictions different from any other ordinance, rule, regulation, statute, or provision of law, the provisions that are more restrictive or that imposes higher standards shall govern.

415.06 DEFINITIONS

Agricultural District means a district created under the Commonwealth of Kentucky's agricultural district program and administered by the Mason County Conservation District pursuant to KRS 262.850 in which utility scale SES are prohibited.

Agricultural Solar Energy System (Ag SES) means a SES that is used to provide the energy needs of a farm consisting of at least five contiguous acres conducting an agricultural land use described in KRS 100.111. SES that qualify as merchant electric generating facilities as defined in and regulated by KRS 278.704 are not considered Ag SES.

Exempt Solar Energy System (Exempt SES) means a SES that is a facility of a municipally owned electric system or public utility regulated by the Kentucky Public Service Commission or Federal Energy Regulatory Commission, which is exempt from planning and zoning requirements under KRS 100.324.

Farmland of Statewide Importance means a map unit identified by the Natural Resources Conservation Service as including soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods.

Floodplain means any land area susceptible to being inundated by flood waters from any source.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Footprint of the SES is calculated by drawing a perimeter around the outermost SES panels and any fencing or equipment necessary for the equipment to function, such as transformers, inverters, and storage batteries as well as all leased and purchased land, visual buffers, and transmission lines or portions thereof that are required to connect the SES to a utility or customer outside the SES perimeter.

Operator means any person or entity responsible for the daily operation and/or that claims ownership and benefits economically from the operation of an SES facility.

Planning Commission means the Mason County Joint Planning Commission, the local land use planning body for the City of Maysville and Mason County, Kentucky.

Prime Farmland means a map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture as having the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses.

Scenic byway as defined by KRS 177.572 means a highway maintained by a local government that has roadsides or view sheds of aesthetic, cultural, historical, or archaeological value worthy of preservation, restoration, protection, or enhancement.

Scenic highway as defined by KRS 177.572 means a state-maintained highway that has roadsides or view sheds of aesthetic, cultural, historical, or archaeological value worthy of preservation, restoration, protection, or enhancement. As of January 1st, 2022, US Highway 68 is the only scenic highway in Mason County.

Siting Board Regulated SES means a SES that constitutes a “merchant electric siting facility” under KRS 278.700(2), the construction and siting of which is subject to review and approval of the Kentucky State Board on Electric Generation and Transmission Siting. A merchant electric siting facility is an electricity generating facility or facilities that, together with all associated structures and facilities are capable of operating at an aggregate capacity of ten megawatts (10 MW) or more and sell the electricity produced in the wholesale market, at rates and charges not regulated by the Kentucky Public Service Commission.

Solar array means one or more rows or sections of solar panels.

Solar Energy System (SES) means a device, including its components and subsystems, that collects solar energy for electricity generation, consumption, or transmission, or for thermal applications. SESs are in turn divided into three types depending on how the system is incorporated into the existing land use:

- **Integrated Solar Energy System** means an SES where the solar materials are incorporated into the building materials, such that the building and solar system are reasonably indistinguishable, or where the solar materials are used in place of traditional building components, such that the SES is structurally an integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building façade, skylight, shingles, canopy, light, or parking meter.
- **Rooftop Solar Energy System** means an SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES.
- **Ground Mounted Solar Energy System** means an SES that is structurally mounted to the ground and does not qualify as an Integrated SES or Rooftop SES. Ground Mounted SESs are subcategorized as follows:
 - **Small Scale Ground Mounted Energy System (Small Scale SES)** which is a Ground Mounted SES with a Footprint of less than 2,500 square feet
 - **Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)** which is a Ground Mounted SES with a Footprint of between 2,501 square feet and ten (10) acres. Intermediate Scale SES are considered utility scale SES in this Ordinance.
 - **Large Scale Ground Mounted Solar Energy System (Large Scale SES)** means a Ground Mounted SES with a Footprint of more than ten (10) acres. Large Scale SES are considered utility scale SES in this ordinance.

SES Structure is anything constructed or made for use with SES, and which requires a permanent location in or on the ground or attachment to something having a permanent location in or on the ground.

415.07 DISTRICT REGULATIONS

SES are permitted only in districts as specified in Code of Ordinances Section 406, Land Use Classification and Designation. Where an Integrated or Rooftop SES is proposed to be installed on a structure located within a designated historic district, the proposed installation may

require a Certificate of Appropriateness issued by the Maysville/Washington Board of Architectural Review.

415.08 SETBACK REQUIREMENTS

A. Minimum Setback Distances for Utility Scale SES Structures

Horizontal distance from a...	Minimum Setback Distance (measured in feet)
Private property line, measured from the nearest edge of the project footprint to the property line	500 ¹
Residential dwellings, regularly occupied industrial or institutional buildings, public or semi-public institutions such as schools and churches and historical landmarks measured from the nearest edge of the project footprint to the nearest corner of the structure.	600 ¹ (properties greater than 5 acres) 750 ¹ (properties smaller than 5 acres)
Public road right-of-way, measured from the nearest edge of the project footprint to the edge of the right-of-way	100 ²
Designated scenic highways and byways measured from the nearest edge of the project footprint to the edge of the right-of-way	250
Other rights-of-way, such as railroads and public utility easements, measured from the nearest edge of the project footprint to the edge of the right-of-way	50
Public conservation lands, measured from the nearest edge of the project footprint to the nearest point of the public conservation land in question	250
Incorporated limits of a municipality and County boundary, as measured from the nearest edge of the project footprint to the corporate	250 ¹

Regulatory floodways or floodplains, as defined by the Federal Emergency Management Agency, measured from the nearest edge of the project footprint to the nearest point of the floodplain or floodway in question.	250
Wetlands, as defined by the U.S. Army Corps of Engineers, measured from the nearest edge of the project footprint to the nearest point of	250

¹This setback shall not apply to properties with pre-existing utility scale SES or those of participating landowners.

²The setback shall be measured from future public rights-of-way width if a planned public road improvement or expansion is known at the time of application.

B. Utility Scale SES Ancillary Structure Setback

1. Utility scale SES primary structures and ancillary structures, such as substations and maintenance and operation facilities, are considered principal structures and subject to principal structure setbacks unless otherwise specified herein or if specifically identified as an accessory structure in Code of Ordinances Section 408.2.

2. For all poles carrying overhead wiring connecting utility scale SES to a substation for connection to a utility's electric transmission line, there are no setback requirements from property lines as long as the poles are located within a recorded easement for such purpose.

415.09 SAFETY DESIGN AND INSTALLATION STANDARDS

A. Equipment Type

All solar panels shall be constructed of commercially available equipment.

B. Industry Standards and Other Regulations

All SES shall conform to applicable industry standards, as well as all local, state and federal regulations. An applicant shall submit certificate(s) of design compliance that solar panel manufacturers have obtained from Underwriters Laboratories, DNV-Gl, or an equivalent third party.

C. Electrical components

1. Standards. All electrical components of all SES shall conform to applicable local, state and national codes, and any relevant national and international standards.
2. Collection Cables. All electrical collection cables between each solar array and/or ancillary structures shall be located underground wherever possible unless organized with a cable management system that prioritizes safety and that loses none of the benefits of underground cable collection.
3. Transmission lines/Distribution lines. All transmission and/or distribution lines that are buried should be at a depth consistent with or greater than local utility and telecommunication underground lines standards.
4. Batteries. The installation of batteries must occur at the time of initial development; installation of batteries after initial development shall require additional permits.

D. Reflective surfaces.

All surfaces shall be matte or non-reflective. Solar panels shall be as non-reflective as possible and conform to any Federal Aviation Administration requirements for SES near airports.

E. SES Warnings and Notices.

The following notices shall be clearly visible on utility scale SES facilities:

1. "No Trespassing" signs shall be attached to every perimeter fence.
2. "Danger" signs shall be posted at the height of five (5) feet on SES accessory structures.
3. A sign shall be posted on SES structures showing an emergency telephone number, which shall be updated and current.
4. The manual electrical and/or shutdown disconnect switch(es) shall be clearly labeled.
5. Sign or signs shall be posted on the pad-mounted transformer and the substation(s) warning of high voltage.
6. Private roads providing access to utility scale SES shall have posted an Emergency-911 address private road sign.

F. Materials Handling, Storage and Disposal

1. Solid wastes. All solid wastes whether generated from supplies, equipment, parts, packaging, operation or maintenance of the SES, including old parts and equipment related to the construction, operation and/or maintenance of the SES shall be removed from the site and disposed of in accordance with all federal, state, and local laws.

2. Hazardous Materials. All hazardous materials or waste related to the construction, operation and/or maintenance of any SES shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

415.10 OTHER APPLICABLE STANDARDS

A. Solar Access.

Consistent with KRS 381.200(2), a property owner or developer may obtain a solar easement from another property owner for the purpose of ensuring adequate exposure to sunlight for a Ground Mounted SES. Such easement shall be recorded.

B. Lighting.

Lighting of SES shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporate full cut-off features, and incorporate motion sensors where feasible. Lighting shall be designed to avoid light trespass and prevent glare. Nothing in this Ordinance is intended to preclude installation of lighting required by the Federal Aviation Administration.

C. Height Requirements.

1. Ground Mounted SES shall not exceed fifteen (15) feet in height as measured from the highest natural grade below each solar panel without approval by the appropriate board of adjustment. The height restriction excludes utility poles, substation structures, and antennas constructed for the project. A Ground Mounted SES may exceed fifteen (15) feet in height upon a finding that the SES would be more productive, use less land, or provide other environmental, economic, or other benefits if the height limitation is increased.

2. Rooftop SES shall conform to any height restrictions for roof-mounted mechanical devices or equipment for the applicable zoning district and may exceed the maximum permitted height for the structure type by no more than five (5) feet. A Rooftop SES shall be positioned on the roof so as not to extend above or beyond the edge of any ridge, hip, valley, or eave, provided that where it is mounted on a sloped roof, the SES shall not vertically exceed the highest point of the roof to which it is attached by more than five (5) feet.

D. Sewer and Water

All facilities or structures that are part of the utility scale SES project shall comply with the existing septic and well regulations as required by the Mason County, Kentucky Health Department and/or the State of Kentucky Department of Public Health.

E. Noise and Vibration

1. No SES or ancillary structure shall be located so as to create a decibel level greater than 30 dBA at the property line of the parcel in which an SES is located and also less than 50 dB(C) at the property lines of the parcel in which an SES is located. These noise limits shall apply only to normal operation of SES and supporting equipment, excluding the use of equipment inherent to general human habitation, such as automobiles.

2. The application shall include a pre-construction sound study that establishes the ambient sound conditions in the proposed project area and surrounding the project area with a perimeter of one mile. The sound study shall be performed by a certified independent acoustical engineer. The sound study must provide a description of the testing, sampling and process methodology used in determining the ambient measurement. The firm with which the engineer is associated shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the independent acoustical engineer shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA.

3. Within twelve months after the date when the project is fully operational the operator shall conduct a two-phase post-construction sound study conducted by an independent accredited sound engineer chosen by the Planning Commission and paid for by the applicant/operator. Post-construction sound level measurements shall be taken both with all SES systems running and with all SES systems off. The post-construction sound measurements shall be reported to the Planning Commission and made available for public review.

4. If sound measurements from the post-construction analysis show levels above what is permitted by this Ordinance, the operator shall take all necessary steps to remediate the problem.

F. Protection of Farmland and Revegetation of Disturbed Areas

1. Compaction of soil associated with the location of roads and installation staging areas for utility scale Ground Mounted SES on land zoned for agricultural use shall be minimized to the extent possible. Compaction of soil associated with the location of roads and installation staging areas for all Ground Mounted SES on land zoned for agricultural use that are classified either as prime farmland or

farmland of statewide importance shall be avoided to the extent possible, and the soils shall be de-compacted as part of the decommissioning process.

2. Upon completion of construction and installation of the Ground Mounted SES, all temporary roads constructed by the applicant shall be removed, and all disturbed areas shall be graded and reseeded with short-term cover crops and sustainable, non-weed native vegetation in order to establish an effective ground cover and to minimize erosion and sedimentation. The permanent location of solar arrays on impermeable surfaces, including but not limited to gravel and asphalt, is prohibited. Temporary roads may remain upon request by the property owner.

G. Water Runoff

Concentrated discharge of stormwater runoff from SES facility solar arrays shall be carefully managed to prevent soil scouring, erosion, and contamination, the details of which shall be described in the Erosion Control/Stormwater Runoff Plan required in Section 415.17(D).

H. Historic Preservation.

Where an Integrated or Rooftop SES is proposed to be installed on a structure located within a designated historic district, the proposed installation may require a Certificate of Appropriateness issued by the Maysville/Washington Board of Architectural Review.

I. Signage

All signs pertaining to an utility scale SES project must comply with Section 411, Sign Regulations, unless otherwise specified or elsewhere in this Ordinance:

1. No sign shall exceed sixteen (16) square feet in surface area except development signs.
2. No sign shall exceed eight (8) feet in height.
3. The manufacturer's or operator's company name and/or logo may be placed upon the compartment containing the electrical equipment in accordance with customary practice.
4. An identification sign relating to the SES Project development shall be located on each side of the total SES Project area. There shall be at least one sign for every quarter-mile of fencing along the edge of the project footprint. Development signs must be sized and placed in compliance with Section 411 and must include seven (7) day per week contact information to reach a responsible

representative of the operator with authority to resolve problems associated with development of a SES Project.

5. No other advertising signs or logos shall be placed or painted on any structure or facility with the exception of an identifying sign at the operation and maintenance facility.

J. Feeder Lines

Feeder lines (lines at distribution levels) installed as part of any SES shall not be considered an essential service. To wit, all communications and feeder lines installed as part of any SES shall be buried underground wherever possible unless organized with a cable management system that prioritizes safety and that loses none of the benefits of underground cable collection.

K. Other Appurtenances

No appurtenances other than those associated with the SES construction, operations, maintenance, decommissioning/removal, and permit requirements shall be connected to any SES structure except with express, written permission by the Board of Adjustment.

415.11 OPERATION AND MAINTENANCE

A. Physical Modifications

In general, any physical modification to any SES that alters major electrical components shall require re-certification. Like-kind replacements shall not require re-certification. Therefore, prior to making any physical modification, the operator shall confer with the Planning and Zoning Administrator/Building Official for the City of Maysville to determine whether the physical modification requires re-certification.

B. Communications Interference

Prior to construction, a communications study to determine whether the proposed utility scale SES will have any adverse impacts on any public or public serving utility microwave transmissions shall be completed. If necessary, the applicant or successor shall mitigate interference with electromagnetic communications, such as Wi-Fi, radio, telephone, microwaves, or television signals caused by any SES. In addition, the applicant or successor shall comply with the following:

1. Post-Construction. If, after construction of the SES, the operator receives a written complaint that can be substantiated through an independent review related to interference with the broadcast of residential television, Wi-Fi, telecommunication, communication or microwave transmissions that existed prior

to construction of the SES, the operator shall take reasonable steps to mitigate said interference. Interference with private telecommunications systems such as GPS shall be between the company and the complainant.

2. Failure to Remedy a Complaint. If an agreement to remedy a known interference is not reached within sixty (60) days, appropriate action will be taken. If further negotiations and/or mitigation measures to reduce or eliminate the interference do not remedy the problem it may result in requiring the SES to become inactive. This Section does not apply to interference with private telecommunications systems. See Complaint Procedure in subsection D below.

C. Declaration of Public Nuisance

Any utility scale SES declared to be a hazard to public safety (unsafe) by the City of Maysville or Mason County by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the approved Decommissioning Plan.

D. Complaint Procedure

1. All complaints regarding utility scale SES operation shall be logged by the operator. At minimum the log shall describe the name and address of the complainant, contact information of the complainant, when the complaint is received, a detailed description of the nature of the complaint, action taken to resolve the complaint and the date the complaint is resolved. If any complaint is considered by the operator to not be the responsibility of the operator a reason shall be provided to the complainant and so noted on the log. The log must be sent to the Planning and Zoning Administrator and the operator at a frequency no less than once per quarter. Upon receipt of a formal complaint regarding noise, the SES operator shall be responsible for conducting a specific focused sound study to ascertain facts associated with a specific study to address the concern of the complainant and shall be financially responsible for the study. The acoustical engineering firm that conducts the complaint generated sound study must be different than that of the firm that conducted the pre- and post-construction studies and must also be similarly accredited.

2. If after sixty (60) days there is no resolution of a registered complaint the complainant may provide notice to the Planning and Zoning Administrator accompanied by a fee of \$250.00 that they intend to enter into binding arbitration of the unresolved complaint. Failure by the operator to perform an action specified by the arbitrator will be considered a violation of the zoning ordinance and subject to the applicable enforcement penalties and remedies. Upon receipt of a request for arbitration the Planning and Zoning Administrator will arrange for a

time and place to meet with the arbitrator. Upon approval of a SES project the operator shall continually fund a non-reverting fund (for arbitration only), which will contain no less than \$5,000 dollars at any time, for the life of the SES project. Notification by Certified Mail of a deficiency in the balance of the fund to the operator shall be the responsibility of the Planning and Zoning Administrator. If upon notification that the fund is deficient, the operator shall have sixty (60) days to bring the fund back to the prescribed minimum amount. If the payment is not satisfied within the sixty (60) days, the SES project will be deemed in violation of the permit. The arbitrator shall be a member of the Kentucky Bar Association, be on the Roster of Court-Approved Mediators in the State of Kentucky and not be a citizen of the City of Maysville or Mason County, Kentucky. The Planning and Zoning Administrator may appear and present evidence on behalf of a complainant if requested to do so.

415.12 SCREENING AND BUFFERING PLAN

Prior to filing an application for a permit under this Ordinance, the applicant shall formulate a screening and buffering plan. Utility scale Ground Mounted SES shall have or have installed a visual buffer that will provide an effective visual and lighting screen between participating and non-participating properties and roadways. Existing buffers along the edge of an SES footprint shall be preserved and utilized when reasonably practical. Vegetative screening and buffers are preferred.

A. Content of Screening and Buffering Plan

1. Vegetation types/disposition. Detailed maps with renderings of the proposed vegetation used for screening and buffering, including timelines for the maturation of vegetative screening.
2. Modification/replacement of vegetation. Procedure outlined for the replacement of vegetative screening that has become damaged or has died due to natural or man-made causes.

415.13 DECOMMISSIONING PLAN

Prior to filing an application for a permit under this Ordinance, the appropriate Executive authority with jurisdiction and the applicant or successor shall formulate a Decommissioning Plan outlining the responsibility for and anticipated means and cost of removing an utility scale SES at the end of their serviceable life or upon becoming a discontinued or abandoned use in order to ensure that the SES is properly decommissioned.

A. Content of Decommissioning Plan

1. Assurance. Written assurance that the SES will be properly decommissioned upon the expiration of the project life or in the event that the SES Project is abandoned.

2. Cost Estimates. The applicant or successor shall provide a contractor cost estimate for demolition and removal of the SES, and for the subsequent reclamation of the land within the project boundary. The cost estimates shall be made by a competent independent party, such as a professional engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning utility scale SES.

1. Financial Assurance. Prior to commencement of construction the applicant or its successor, as defined, will provide to the Executive of the appropriate jurisdiction a financial assurance for the cost of decommissioning SES facilities and related improvements to be constructed under the permit. The financial assurance shall be in the form of a performance bond, surety bond, letter of credit or other security instrument mutually acceptable to the Executive and the Applicant or Applicant's Successor. The amount of the bond or other similar security shall be set by the Executive and shall be at least equal to the estimated cost of fully completing the Decommissioning Plan approved by the Planning Commission, less the salvage value for the decommissioned facilities and components. In proposing the amount of the bond, the Applicant shall provide evidence of the decommissioning costs and the salvage value as determined by an independent, third-party person with experience and expertise in decommissioning an SES. The bond or other similar security shall be provided by an insurance company or surety that shall at all times maintain at least an "A" rating as measured by the A.M. Best rating agency and shall be noncancelable by the provider or the customer until completion of the Decommissioning Plan or until a replacement bond is secured.

If the SES facility for which a bond or similar security has been furnished is located on leased property or on land owned by the party responsible for completing the Decommissioning Plan, the bond or similar security shall name the governing body of the local municipality in which the SES facility is located as the primary beneficiary of the bond. If the SES facility for which the bond or similar security has been furnished is located on leased property, the bond or similar security shall name the landowner(s) where the bonded facility is located as the secondary beneficiaries of the bond.

The Executive of the appropriate jurisdiction shall be regularly notified by the Applicant, the Applicant's Successor and the provider of financial assurance of any continuing financial obligation by the Applicant or Applicant's successor to keep said financial assurance in good standing. Any notice issued by the provider of financial assurance of failure or potential failure by the Applicant or the Applicant's successor to keep said financial assurance in good standing shall give

the Executive of the appropriate jurisdiction valid cause to exercise the financial assurance to effect a decommissioning.

4. Abandonment by the Applicant or Successor. Written assurance that in the event of abandonment by the applicant or successor, the applicant or successor will provide an affidavit to the Executive of the appropriate jurisdiction representing that all easements and/or property leases for SES facilities shall contain terms that provide financial assurances, including access to the salvage value of the equipment, for the property owners to ensure that SES facilities are properly decommissioned within one (1) year of expiration or earlier of termination of the SES Project. The bond or similar security shall be forfeited if the party responsible for completing the Decommissioning Plan either fails to begin work on the plan within one (1) year of the date that the SES facility ceases to produce electricity for sale or fails to complete the Decommissioning Plan within two (2) years of the date that the SES facility ceases to produce electricity for sale. The local governing body may extend either of the deadlines for good cause shown. Any funds from a bond or similar security that are forfeited for failure to begin or complete a Decommissioning Plan in a timely manner shall only be used to complete the decommissioning of SES facilities on the property or properties for which the bond or similar security was posted.

5. Revegetation and soil de-compacting. Procedures for the removal of any temporary roads constructed for the purposes of decommissioning, the grading and reseeding of any disturbed areas with short-term cover crops and sustainable, non-weed native vegetation, and the de-compaction of soils on land zoned for agricultural use.

6. Updates. The Decommissioning Plan and the bond or similar security shall be reviewed, revised, and updated every five (5) years by the operator to reflect any significant change in circumstances, including but not limited to planned SES project life and property easements and leases, and changes to the estimated costs of effectuating the Decommissioning Plan or to the salvage value of the SES facility or its components. An update of the Decommissioning Plan shall be required upon the change of ownership of any SES facility.

B. Discontinuation and Abandonment

All utility scale SES shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Planning and Zoning Administrator outlining the steps and schedule for returning the SES to service. The Planning Commission may, at its discretion after one year of discontinued production, initiate an action to recommend to the Executive authority that it act to exercise the financial assurance to effect a decommissioning.

1. Removal. An applicant or successor's obligations shall include removal of all physical material pertaining to the project improvements to no less than a depth of four (4) feet below ground level within three hundred sixty-five (365) days of the discontinuation or abandonment of the SES or SES Project, and restoration of the project area to as near as practicable to a condition similar to its previous use immediately before construction of such improvements. Below ground level is understood to be from the existing grade. Covering with fill material does not constitute removal. Removal obligations shall be completed by the applicant or successor or by the City or County at the applicant's expense.

2. Written notices. Prior to implementation of procedures to effect the financial guarantee the appropriate Executive authority shall provide notice to the operator according to the terms of the required Decommissioning Plan. The operator of the project must provide notice to the appropriate Executive authority and to the Planning and Zoning Administrator of its intention to change ownership, abandon, decommission or suspend operations of an utility scale SES project.

3. Costs incurred by the City or County. If the City or County removes a SES structure and appurtenant facilities, it may sell the salvage to defray the costs of removal. By acceptance of a building permit, the applicant or operator grants a license to the appropriate Executive authority to enter the property to remove SES structures and appurtenant facilities pursuant to the terms of an approved Decommissioning Plan.

415.14 LIABILITY INSURANCE

The operator of any utility scale SES shall maintain a current general liability policy covering bodily injury and property damage and shall be required to name the City of Maysville or Mason County as an additional insured with dollar amount limits not less than \$2,000,000 per occurrence, \$5,000,000 in the aggregate, and a deductible which is reasonably available and which is mutually suitable to the applicant or successor and the City or County.

415.15 ENVIRONMENTAL INSURANCE

The operator of any utility scale SES shall maintain a current environmental insurance policy covering loss and damages associated with the unexpected release of pollutants and subsequent environmental contamination, and shall be required to name the City of Maysville or Mason County as an additional insured with dollar amount limits not less than \$2,000,000 per occurrence, \$5,000,000 in the aggregate, and a deductible which is reasonably available and which is mutually suitable to the applicant or successor and the City or County.

415.16 APPLICATION PROCEDURES

- A. Within 90 days of receipt of an application to construct an utility scale SES:
1. Local government staff and elected officials shall review the application;
 2. The Planning and Zoning Administrator shall provide the Planning Commission with a staff report based on review of the application;
 3. The Planning Commission shall hold a public hearing, at which it shall address the contents of the application and the staff report, and render a final decision to approve or deny the application. If minor changes are needed to the application, such as the unintentional omission of one or more of the application requirements described in 415.16(B), the Planning Commission may enter into a written agreement with the applicant for the submission of minor amendments to the application without requiring a new application for a specified date, at which a final decision will be rendered to approve or deny the amended application. If the application is denied, the Planning Commission shall state the reasons for the denial in its written decision and may make suggestions for a subsequent application, which, in its opinion, more appropriately address the concerns of local government officials, the public, and the Comprehensive Plan; and
 4. The Planning Commission shall notify the applicant in writing of its decision. If the Planning Commission fails to issue a final decision within 90 days, the application shall be deemed approved.
- A. An application for an utility scale SES shall include the following information:
1. Contact information of project applicant including the name(s), address(es), and phone number(s) of the applicant(s), as well as a description of the applicant's business structure and overall role in the proposed project.
 2. Contact information of current project operator including the name(s), address(es), and phone number(s) of the operator(s), as well as a description of the operator's business structure and overall role in the proposed project, and including documentation of land ownership or legal control of the property on which the SES is proposed to be located. The Planning and Zoning Administrator shall be informed of any changes in ownership.
 3. Legal description. The legal description, address, and general location of the project.
 4. A General SES Project Description, including to the extent possible, information on solar panels to be used, including:
 - a. Number of solar panels/arrays;

- b. Manufacturer of solar panels with brochure depiction;
- c. Name plate generating capacity;
- d. Solar panel/array heights;
- e. Installation depths of solar arrays and any associated underground cabling;
- f. The means of interconnecting with the electrical grid;
- g. If the applicant has a purchase power agreement (PPA) name the entity; and
- h. All related accessory structures.

5. **Site Layout Plan.** A site layout plan, drawn at an appropriate scale, showing distances pertaining to all applicable setback requirements. The site layout plan must be certified by a registered land surveyor, and depict:

- a. Property lines, including identification of adjoining properties, with a notation indicating participating and non-participating landowners;
- b. SES access roads;
- c. Substations(s), and operational support meteorological tower(s) location;
- d. Operation and maintenance building location (building to be permitted separately);
- e. Electrical cabling;
- f. Ancillary equipment, including batteries;
- g. Occupied structures within a quarter mile of all proposed SES project areas;
- h. Distances from SES arrays to each setback requirement;
- i. Location of all existing and planned public roads which abut or traverse the proposed site;
- j. The location of all above-ground utility lines within a distance of one mile of any proposed SES structure;

- k. The location of any historic or heritage sites within the SES Project Area;
 - l. The location of any wetlands based upon a delineation plan prepared in accordance with the applicable U.S. Army Corps of Engineers requirements and guidelines;
 - m. The location of any floodplain, floodway, or flood-prone areas based on flood maps prepared by the Federal Emergency Management Agency; and
 - n. A topographical map of the project area and a one-mile perimeter with contours of not more than ten (10) foot intervals.
6. A map from the Natural Resources Conservation Service identifying prime farmland and farmland of statewide importance (if in a district zoned as agricultural).
7. Sound Study. A sound study that identifies all known occupied structures within 1,000 feet of every proposed SES project area, including a description of the potential sonic impacts of any SES arrays or structures and on adjacent properties as per standards indicated in Section 415.10(E).
8. Communications Study. A communications study required by Section 415.11 (B).
9. Utility Notification. Evidence that the pertinent electric utility company has granted approval for interconnection.
10. Statement of Federal Aviation Administration compliance. A statement of compliance with all applicable Federal Aviation rules and regulations, including any necessary approvals for installations within proximity to an airport, and/or studies/compliance related to glare effects from SES.
11. Statement of Kentucky Airport Zoning Commission compliance. A statement of compliance with all applicable Kentucky Airport Zoning Commission rules and regulations and any necessary approvals for installations within proximity to an airport.
12. Compliance with Fish and Wildlife Requirements. Proof of correspondence and cooperation with wildlife agencies for the purposes of preventing harm to endangered or protected wildlife species and migratory birds and in compliance with the Endangered Species Act and the Migratory Bird Treaty Act. Applicants shall provide documentation that they are in

communication and cooperation with the U.S. Fish and Wildlife Service and the Kentucky Department of Natural Resources.

13. Compliance with National Electrical Code. A line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is typically supplied by the manufacturer.

14. Compliance with Commonwealth of Kentucky Department for Environmental Protection Standards. Statements and results from environmental impact studies, including but not limited to geological surveys/studies, air quality studies, water quality studies, and waste studies. If no detailed geological survey or study is required by the Commonwealth of Kentucky Department for Environmental Protection, the applicant must provide such a study or survey using a certified independent geologist; the report of such a study or survey must draw conclusions regarding the anticipated geological effects of utility scale SES development in Mason County.

15. Good Neighbor Notice. An affidavit of service along with supporting documentation that indicates notification was given to all property owners (as per current records of the Mason County, PVA) in and within a quarter mile of the proposed footprint of the SES project no less than 30 days prior to the date of the public hearing. The Notice shall contain at minimum:

- a. A map showing the general layout of the project.
- b. An opportunity to meet with the petitioner or contact information whereby questions may be asked by the public.
- c. A list of steps that will be required to accomplish the project.

16. Any other item reasonably requested by the Planning and Zoning Administrator or the Building Official.

B. Dimensional variance applications for proposed utility scale SES facilities shall be reviewed and decided by the relevant board of adjustment through the process outlined in KRS Chapter 100 and Section 404 of this ordinance.

415.17 PRE-CONSTRUCTION REQUIREMENTS

Prior to the commencement of construction but subsequent to the issuance of a permit as provided for in section 415.16 herein, the following shall be required and materials submitted and reviewed by local government staff and elected officials, who shall certify that the submissions are in compliance with all applicable regulations:

- A. Federal Aviation Administration permits application and approval, if applicable.
- B. Decommissioning Plan as described in Section 415.13.
- C. Economic Development Agreement, Drainage, and Road Use and Maintenance Agreements required before issuance of an improvement location permit.
 - 1. An Economic Development Agreement approved by the appropriate Executive authority shall be developed. The Executive authority may include other stakeholders in the negotiations at its discretion. The Economic Development Agreement includes all economic incentives, such as tax revenue, that will benefit the community.
 - 2. A Road Use and Services Maintenance Agreement approved by the appropriate Executive authority that addresses, at minimum, the following:
 - a. A compilation of routes that will be used for construction and maintenance purposes, approved by the Maysville Director of Public Works and/or the Director of the Mason County Roads Department;
 - b. A documented baseline survey to determine existing road conditions prior to construction. The survey shall include photographs, or video, or a combination thereof, and a written agreement to document the condition of the public facility;
 - c. A surety bond or similar instrument approved by the County Attorney, in an amount sufficient to ensure that future repairs to public roads are completed to the satisfaction of the unit of local government. The cost of bonding is to be paid by the applicant. This requirement may be addressed in conjunction with the Economic Development Agreement;
 - d. A plan to address transportation routes and conditions during construction. If the route includes a public road, it shall be approved by the appropriate highway official(s) and school transportation departments;
 - e. A plan to avoid damage and to address repair to damaged roads;
 - f. A requirement that newly constructed SES access roads will not impede the flow of water; and
 - g. Provisions to address crop, field tile, waterway and other infrastructure damage.
- D. An Erosion Control/Stormwater Runoff Plan compliant with any stormwater quality management plan adopted by the State or local applicable jurisdiction.

E. A Utility Plan drawn to the same scale as the site layout plan illustrating the location of all underground utility lines associated with the total SES Project. This may be incorporated into the site plan. The Utility Plan shall also include water infrastructure with a written statement describing how water infrastructure will meet the SES facility's needs.

F. A Dust Control Plan detailing reasonable measures to be employed to control dust during construction of an utility scale SES Project. This may be incorporated into the Road Use and Services Maintenance Agreement.

G. Light Reflection Study. A light reflection modeling study that identifies all known occupied structures and the effect of any SES array on those structures as per Section 415.10(B).

H. Engineering Certification. For all SES, the manufacturer's engineer or another qualified registered independent professional engineer shall certify, as part of the building permit application, that the foundations and designs of SES structures are within accepted professional standards, given local soil and climate conditions. An engineering analysis of SES structures showing compliance with the applicable regulations and certified by a licensed independent professional engineer shall also be submitted. The analysis shall be accompanied by standard drawings of all SES structures. The engineering certification may be completed following submission of an improvement location permit application on condition of being required no later than thirty (30) days prior to initiation of construction.

I. Emergency Management Plan. A site plan that requires the local Emergency Management Director's approval and which describes emergency service access to SES arrays, related structures, batteries, and ancillary equipment and detailed procedures for any potential hazardous emergencies caused by natural or man-made disasters that could occur within the SES facility, such as battery fires due to lightning strikes or equipment failures. This plan includes but is not limited to procedures for the evacuation of local citizens within the affected area and the clean-up of hazardous materials and waste created by any such disasters.

415.18 POST-CONSTRUCTION REQUIREMENTS

A. Post-construction, the operator shall comply with the following provisions:

1. Road Repairs. Any road damage caused by the construction of project equipment, the installation of the same, or the removal of the same, shall be repaired as per the Road Use and Services Maintenance Agreement.

2. As-Built Plans Requirement. Whereupon completion of all development, the exact measurements of the location of utilities and structures erected during the development are necessary for public record and shall therefore be recorded.

The applicant or successor shall submit a copy of the final construction plans (as-built plans), as amended, to the Building Official with the exact measurements shown thereon. The Building Official, after being satisfied that the measurements are substantially the same as indicated on the originally approved final plan(s), shall approve, date and sign said Construction Plans for the project, which the applicant or successor shall then record.

3. Staging Area Remediation. Any and all areas temporarily used for storage, parking, and administration during the construction of SES facilities must be returned to their previous conditions and all negative environmental externalities must be remediated.

4. Post Construction Sound Study. Within twelve months after the date when the project is fully operational the operator shall conduct a two phased post-construction sound study conducted by an independent accredited sound engineer chosen by the Planning Commission and paid for by the operator. Post-construction sound level measurements shall be taken both with all SES systems running and with all SES systems off. The post-construction sound measurements shall be reported to the Planning Commission and made available for public review.

5. Change in Ownership. It is the responsibility of the operator listed in the application to inform the Planning and Zoning Administrator of all changes in ownership and operation of the SES facility during the life of the project, including the sale or transfer of ownership or change in operator.

Notes/Comments

- The SES ordinance will create the corresponding entry into the Industrial/Manufacturing land use charts:

Industrial / Manufacturing	R-1	R-2	R-3	R-4	TH-1	B-1	B-2	B-3	D-1	P-1	A-1	A-2	I-1	I-2	MH	C	RR-1	RR-2	I-3	
Solar Energy System																				
Integrated*	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Rooftop*	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Small Scale*	P	P	P	P	X	P	P	P	X	P	P	P	P	P	P	P	P	P	P	P
Intermediate Scale**	X	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	P
Large Scale**	X	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	P

*Where an Integrated or Rooftop SES is proposed to be installed on a structure located within a designated historic district, the proposed installation may require a Certificate of Appropriateness issued by the Maysville/Washington Board of Architectural Review.

**Utility scale SES facilities are permitted ONLY upon approval from the Mason County Joint Planning Commission.

REPUBLISHING OF ORDINANCE NO. 02-07

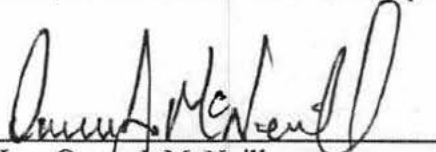
Ordinance No. 02-07, as previously amended, and as amended hereby, shall be REPUBLISHED in full. Except as amended hereby or as previously amended, such Ordinance remains in full force and effect.

INCORPORATION OF PROPOSED AMENDMENTS

The Proposed Amendments of the Planning Commission pertaining to the regulation of Solar Energy Systems in Mason County, Kentucky, consisting of the Planning Commission's Findings of Fact, Conclusions of Law, and Recommendation, and the separate Proposed Text Amendment attached thereto, are attached hereto as an exhibit, and incorporated herein by reference as if set forth in full


Given first reading this 14th day of June, 2022.

Given second reading and upon motion duly made, seconded and unanimously passed, adopted this ____ day of July, 2022.



Hon. Owen J. McNeill
Judge/Executive

ATTESTED BY:



Stephanie Schumacher
Mason County Clerk

MASON COUNTY JOINT PLANNING COMMISSION
May 4, 2022
5:30 P.M.

IN RE: Proposed text amendment regulating Solar Energy
Systems.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
and
RECOMMENDATION

In accordance with the Maysville Code Of Ordinances and KRS Chapter 100, the Mason County Joint Planning Commission (hereinafter "Commission") conducted a special meeting at the Mason County Public Library, 218 East Third Street, Maysville, Mason County, Kentucky on May 4, 2022 at 5:30 P.M. regarding a proposed text amendment to the Land Use Management Ordinance regulating Solar Energy Systems.

The meeting was called to order with a quorum in attendance. Commission members present were Xandy Stewart, Annette Walters, Lesley Myers, Tim Teegarden, Tom Coe, John Hutchings, Peggy Frame and David Reed. No members of the Commission were absent.

After discussion of the proposed text amendment, and upon motion duly made and seconded, the Commission unanimously adopted the following Findings Of Fact and Conclusions Of Law:

FINDINGS OF FACT

1. The Joint Planning Commission conducted a properly noticed public hearing on November 16th and 18th, 2021. Developers, local citizens' groups and individual citizens all were given the opportunity to speak under rules announced and adopted by the Joint Planning Commission prior to the commencement of the hearing. The transcript of that hearing has previously been adopted into the record and is made part of these findings of fact.
2. The Joint Planning Commission neglected to swear in persons who spoke at the public hearing on the night of November 18, 2021. Written affirmations of their testimony were obtained from all but two persons who spoke that evening. The testimony of those two persons from whom affirmations were not obtained are stricken from the record and are not part of these findings.
3. Written comment was also accepted into the record in addition to or in lieu of oral testimony at the public hearing. The written comments that were submitted timely and in conformity with the rules announced and adopted by the Joint Planning Commission prior to the commencement of the public hearing have previously been adopted into the record and are made part of these findings of fact.
4. Troy Cracraft, PVA of Mason County, testified before the Joint

Planning Commission on March 2, 2022 at a separate public hearing that was scheduled solely to hear said testimony. His testimony consisted of potential tax revenue as a result of industrial scale solar projects in Mason County. He testified that an industrial scale solar project could provide significant additional tax revenue to the County over the lifetime of the project. His testimony and written report have previously been adopted into the record and both are made part of these findings of fact.

5. The community is divided on the issue of industrial scale solar energy. Ample support for and against it can be found in the community at large, from those who spoke at the public hearing or who submitted written comments.
6. Those who testified or who presented written statements in opposition to industrial scale solar cited multiple reasons for concern. Most were residents of rural southern Mason County in the vicinity of proposed industrial solar projects. Reasons cited for their opposition largely revolved around changes to the rural setting, loss of valuable and productive farmland, aesthetics, potential reduction in property values, noise, concerns related to decommissioning and threats to the environment and public health. Most testifying were offering personal opinions but some offered testimony that claimed to

be based upon research or opinions of others. Some of the local farmers who testified at the hearing expressed concern that projects as large in scale as those proposed would reduce the availability of farmland for future generations who would lose their ability to make a living from the land.

7. Those who testified or who presented written statements in favor of industrial scale solar were largely comprised of individual landowners or family members of landowners who have either already leased their land to solar developers or who would like to lease their land to solar developers. They testified that in their opinion, in many cases, the "family farm" is becoming more and more rare in this area and it is increasingly difficult to make a living as just a farmer. They cited to the loss of tobacco revenues and issues with other forms of farming historically tied to the area. They expressed their hope that participating in an industrial scale solar project and the steady and regular lease payments that would result would greatly increase their chances of keeping their family farms intact for future generations and would better enable them to maintain their property and meet the ever-growing costs of farming for a living. They testified that generally speaking they entered into their leases with their eyes wide open and were aware of the potential risks. Finally, most in favor of

industrial scale solar spoke of their desire and right to do with their land as they pleased and that in their opinion the concerns raised by those in opposition to the potential development were overblown. Not all who spoke in favor of industrial scale solar were landowners. Some of those testified that they wanted to see new projects come to the area and that landowners should be able to do with their land as they want.

8. There was testimony presented as to the pros and cons of solar or other "green energy" presented to the Commission versus a continued reliance on fossil fuels. Energy policy is a national and state issue and not one for the Mason County Joint Planning Commission. As such, testimony offered on such large-scale issues was not considered by the Commission.
9. The Joint Planning Commission wants to protect the rights of property owners who are in favor of leasing their land for solar energy as well as protect the rights of property owners who fear adverse effects from potential large scale solar projects in Mason County.
10. The Joint Planning Commission has addressed to the best of its ability safety and environmental concerns in the proposed ordinance.
11. The setbacks in the proposed ordinance balance the rights of

property owners who want to lease their land for solar energy and the rights of property owners who have concerns about potential adverse impacts to their land from potential large scale solar projects in Mason County.

12. The proposed ordinance further addresses siting, development, construction, installation and decommissioning of solar energy systems in a predictable manner that promotes and protects the safety, health and welfare of the community and balances the benefits of renewable energy production and economic development with the protection of local agriculture, existing residential uses and the existing built environment, and historic, natural, and other sensitive areas.

CONCLUSIONS OF LAW

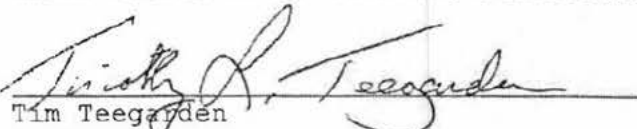
1. That the Mason County Joint Planning Commission is empowered by KRS Chapter 100 and the Code Of Ordinances to conduct public hearings regarding land use matters, and are, in fact, required by law to conduct such hearings.
2. That pursuant to KRS 100.201, the Maysville City Commission and the Mason County Fiscal Court are empowered to enact land use regulations in conjunction with the comprehensive plan.

RECOMMENDATION

WHEREFORE, the Mason County Joint Planning Commission respectfully recommends to the Maysville City Commission and the Mason County Fiscal Court that the 6th draft of the Maysville/Mason County Solar Energy Systems Ordinance with amendments as agreed to at the May 4, 2022 meeting of the Mason County Joint Planning Commission be adopted as a text amendment to the Land Use Management Ordinance. A true and correct copy of said text amendment is attached hereto and incorporated herein by reference.

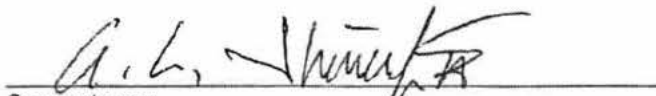
Motion made to recommend by Tom Coe, and seconded by Xandy Stewart. Motion passed 4 - 3 with Xandy Stewart, Annette Walters, Lesley Myers and Tom Coe voting "yes" and John Hutchings, Peggy Frame and David Reed voting "no."

MASON COUNTY JOINT PLANNING COMMISSION



Tim Teegarden
Chairman

Attest:



Secretary

Maysville/Mason County Solar Energy Systems Ordinance Draft

415 Solar Energy Systems (SES)

415.01 PURPOSE

The purposes of this Ordinance are to:

A. Facilitate the siting, development, construction, installation, and decommissioning of Solar Energy Systems, hereinafter referred to as SES, in Maysville and Mason County in a predictable manner that promotes and protects the safety, health and welfare of the community; and

B. Provide a framework for the development for SES, which balances the benefits of renewable energy production and economic development with the protection of local agriculture, existing residential uses and the existing built environment, and historic, natural, and other sensitive areas.

415.02 INTENT

It is the intent of these SES regulations to provide a regulatory framework for the siting, construction and operation of SES within Maysville and Mason County consistent with the Comprehensive Plan for such jurisdiction and consistent with Section 100 (Mission Statement) and Section 202 (Purpose).

415.03 APPLICABILITY

The provisions of this Section are applicable to those districts which permit utility scale SES within the City of Maysville and Mason County, Kentucky, and governs the siting of utility scale SES and related substations, maintenance facilities and other accessory facilities, as defined, that are ancillary to utility scale SES. Any reference to applicant, operator or successor is intended to refer to an entity that is a responsible party in terms of being continually required to abide by the provisions of this Chapter and similarly is bound by any agreement entered into with the City of Maysville and Mason County. Routine maintenance and repair, including the replacement of solar panels, which does not increase the SES footprint or modifications to an existing SES alone or in combination that increases the total SES footprint by no more than 5% of the original footprint does not require subsequent applications under this Ordinance.

415.04 PROHIBITION

No entity or applicant shall construct, operate, or locate an utility scale SES within the City of Maysville or Mason County, Kentucky, without first having applied for and obtained a permit under this Section 415 and having fully complied with the provisions hereof.

415.05 CONFLICT WITH OTHER REGULATIONS

Nothing in this Chapter is intended to preempt other applicable state and federal laws or regulations, including compliance with all Federal Aviation Administration rules and regulations. Nor are they intended to interfere with, abrogate, or annul any other ordinance, rule, or regulation, statute or other provisions of law. In the event that any provision of these regulations imposes restrictions different from any other ordinance, rule, regulation, statute, or provision of law, the provisions that are more restrictive or that imposes higher standards shall govern.

415.06 DEFINITIONS

Agricultural District means a district created under the Commonwealth of Kentucky's agricultural district program and administered by the Mason County Conservation District pursuant to KRS 262.850 in which utility scale SES are prohibited.

Agricultural Solar Energy System (Ag SES) means a SES that is used to provide the energy needs of a farm consisting of at least five contiguous acres conducting an agricultural land use described in KRS 100.111. SES that qualify as merchant electric generating facilities as defined in and regulated by KRS 278.704 are not considered Ag SES.

Exempt Solar Energy System (Exempt SES) means a SES that is a facility of a municipally owned electric system or public utility regulated by the Kentucky Public Service Commission or Federal Energy Regulatory Commission, which is exempt from planning and zoning requirements under KRS 100.324.

Farmland of Statewide Importance means a map unit identified by the Natural Resources Conservation Service as including soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods.

Floodplain means any land area susceptible to being inundated by flood waters from any source.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Footprint of the SES is calculated by drawing a perimeter around the outermost SES panels and any fencing or equipment necessary for the equipment to function, such as transformers, inverters, and storage batteries as well as all leased and purchased land, visual buffers, and transmission lines or portions thereof that are required to connect the SES to a utility or customer outside the SES perimeter.

Operator means any person or entity responsible for the daily operation and/or that claims ownership and benefits economically from the operation of an SES facility.

Planning Commission means the Mason County Joint Planning Commission, the local land use planning body for the City of Maysville and Mason County, Kentucky.

Prime Farmland means a map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture as having the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses.

Scenic byway as defined by KRS 177.572 means a highway maintained by a local government that has roadsides or view sheds of aesthetic, cultural, historical, or archaeological value worthy of preservation, restoration, protection, or enhancement.

Scenic highway as defined by KRS 177.572 means a state-maintained highway that has roadsides or view sheds of aesthetic, cultural, historical, or archaeological value worthy of preservation, restoration, protection, or enhancement. As of January 1st, 2022, US Highway 68 is the only scenic highway in Mason County.

Siting Board Regulated SES means a SES that constitutes a “merchant electric siting facility” under KRS 278.700(2), the construction and siting of which is subject to review and approval of the Kentucky State Board on Electric Generation and Transmission Siting. A merchant electric siting facility is an electricity generating facility or facilities that, together with all associated structures and facilities are capable of operating at an aggregate capacity of ten megawatts (10 MW) or more and sell the electricity produced in the wholesale market, at rates and charges not regulated by the Kentucky Public Service Commission.

Solar array means one or more rows or sections of solar panels.

Solar Energy System (SES) means a device, including its components and subsystems, that collects solar energy for electricity generation, consumption, or transmission, or for thermal applications. SESs are in turn divided into three types depending on how the system is incorporated into the existing land use:

- **Integrated Solar Energy System** means an SES where the solar materials are incorporated into the building materials, such that the building and solar system are reasonably indistinguishable, or where the solar materials are used in place of traditional building components, such that the SES is structurally an integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building façade, skylight, shingles, canopy, light, or parking meter.
- **Roofstop Solar Energy System** means an SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES.
- **Ground Mounted Solar Energy System** means an SES that is structurally

mounted to the ground and does not qualify as an Integrated SES or Rooftop SES. Ground Mounted SESs are subcategorized as follows:

- ***Small Scale Ground Mounted Energy System (Small Scale SES)*** which is a Ground Mounted SES with a Footprint of less than 2,500 square feet
- ***Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)*** which is a Ground Mounted SES with a Footprint of between 2,501 square feet and ten (10) acres. Intermediate Scale SES are considered utility scale SES in this Ordinance.
- ***Large Scale Ground Mounted Solar Energy System (Large Scale SES)*** means a Ground Mounted SES with a Footprint of more than ten (10) acres. Large Scale SES are considered utility scale SES in this ordinance.

SES Structure is anything constructed or made for use with SES, and which requires a permanent location in or on the ground or attachment to something having a permanent location in or on the ground.

415.07 DISTRICT REGULATIONS

SES are permitted only in districts as specified in Code of Ordinances Section 406, Land Use Classification and Designation. Where an Integrated or Rooftop SES is proposed to be installed on a structure located within a designated historic district, the proposed installation may require a Certificate of Appropriateness issued by the Maysville/Washington Board of Architectural Review.

415.08 SETBACK REQUIREMENTS

A. Minimum Setback Distances for Utility Scale SES Structures

Horizontal distance from a...	Minimum Setback Distance (measured in feet)
Private property line, measured from the nearest edge of the project footprint to the property line	500 ¹
Residential dwellings, regularly occupied industrial or institutional buildings, public or semi-public institutions such as schools and churches and historical landmarks measured from the nearest edge of the project footprint to the nearest corner of the structure.	600 ¹ (properties greater than 5 acres) 750 ¹ (properties smaller than 5 acres)

Public road right-of-way, measured from the nearest edge of the project footprint to the edge of the right-of-way	100 ²	
Designated scenic highways and byways measured from the nearest edge of the project footprint to the edge of the right-of-way	250	
Other rights-of-way, such as railroads and public utility easements, measured from the nearest edge of the project footprint to the edge of the right-of-way	50	
Public conservation lands, measured from the nearest edge of the project footprint to the nearest point of the public conservation land in question	250	
Incorporated limits of a municipality and County boundary, as measured from the nearest edge of the project footprint to the corporate limits or County boundary.	250 ¹	
Regulatory floodways or floodplains, as defined by the Federal Emergency Management Agency, measured from the nearest edge of the project footprint to the nearest point of the floodplain or floodway in question.	250	
Wetlands, as defined by the U.S. Army Corps of Engineers, measured from the nearest edge of the project footprint to the nearest point of the Wetland in question.	250	

¹This setback shall not apply to properties with pre-existing utility scale SES or those of participating landowners.

²The setback shall be measured from future public rights-of-way width if a planned public road improvement or expansion is known at the time of application.

B. Utility Scale SES Ancillary Structure Setback

1. Utility scale SES primary structures and ancillary structures, such as substations and maintenance and operation facilities, are considered principal structures and subject to principal structure setbacks unless otherwise specified herein or if specifically identified as an accessory structure in Code of Ordinances Section 408.2.

2. For all poles carrying overhead wiring connecting utility scale SES to a substation for connection to a utility's electric transmission line, there are no setback requirements from property lines as long as the poles are located within a recorded easement for such purpose.

415.09 SAFETY DESIGN AND INSTALLATION STANDARDS

A. Equipment Type

All solar panels shall be constructed of commercially available equipment.

B. Industry Standards and Other Regulations

All SES shall conform to applicable industry standards, as well as all local, state and federal regulations. An applicant shall submit certificate(s) of design compliance that solar panel manufacturers have obtained from Underwriters Laboratories, DNV-GL, or an equivalent third party.

C. Electrical components

1. Standards. All electrical components of all SES shall conform to applicable local, state and national codes, and any relevant national and international standards.

2. Collection Cables. All electrical collection cables between each solar array and/or ancillary structures shall be located underground wherever possible unless organized with a cable management system that prioritizes safety and that loses none of the benefits of underground cable collection.

3. Transmission lines/Distribution lines. All transmission and/or distribution lines that are buried should be at a depth consistent with or greater than local utility and telecommunication underground lines standards.

4. Batteries. The installation of batteries must occur at the time of initial development; installation of batteries after initial development shall require additional permits.

D. Reflective surfaces.

All surfaces shall be matte or non-reflective. Solar panels shall be as non-reflective as possible and conform to any Federal Aviation Administration requirements for SES near airports.

E. SES Warnings and Notices.

The following notices shall be clearly visible on utility scale SES facilities:

1. "No Trespassing" signs shall be attached to every perimeter fence.
2. "Danger" signs shall be posted at the height of five (5) feet on SES accessory structures.
3. A sign shall be posted on SES structures showing an emergency telephone number, which shall be updated and current.
4. The manual electrical and/or shutdown disconnect switch(es) shall be clearly labeled.
5. Sign or signs shall be posted on the pad-mounted transformer and the substation(s) warning of high voltage.
6. Private roads providing access to utility scale SES shall have posted an Emergency-911 address private road sign.

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

1. **Solid wastes.** All solid wastes whether generated from supplies, equipment, parts, packaging, operation or maintenance of the SES, including old parts and equipment related to the construction, operation and/or maintenance of the SES shall be removed from the site and disposed of in accordance with all federal, state, and local laws.
2. **Hazardous Materials.** All hazardous materials or waste related to the construction, operation and/or maintenance of any SES shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

415.10 OTHER APPLICABLE STANDARDS

A. **Solar Access.**

Consistent with KRS 381.200(2), a property owner or developer may obtain a solar easement from another property owner for the purpose of ensuring adequate exposure to sunlight for a Ground Mounted SES. Such easement shall be recorded.

B. **Lighting.**

Lighting of SES shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporate full cut-off features, and incorporate motion sensors where feasible. Lighting shall be designed to avoid light trespass and prevent

glare. Nothing in this Ordinance is intended to preclude installation of lighting required by the Federal Aviation Administration.

C. Height Requirements.

1. Ground Mounted SES shall not exceed fifteen (15) feet in height as measured from the highest natural grade below each solar panel without approval by the appropriate board of adjustment. The height restriction excludes utility poles, substation structures, and antennas constructed for the project. A Ground Mounted SES may exceed fifteen (15) feet in height upon a finding that the SES would be more productive, use less land, or provide other environmental, economic, or other benefits if the height limitation is increased.

2. Rooftop SES shall conform to any height restrictions for roof-mounted mechanical devices or equipment for the applicable zoning district and may exceed the maximum permitted height for the structure type by no more than five (5) feet. A Rooftop SES shall be positioned on the roof so as not to extend above or beyond the edge of any ridge, hip, valley, or eave, provided that where it is mounted on a sloped roof, the SES shall not vertically exceed the highest point of the roof to which it is attached by more than five (5) feet.

D. Sewer and Water

All facilities or structures that are part of the utility scale SES project shall comply with the existing septic and well regulations as required by the Mason County, Kentucky Health Department and/or the State of Kentucky Department of Public Health.

E. Noise and Vibration

1. No SES or ancillary structure shall be located so as to create a decibel level greater than 30 dBA at the property line of the parcel in which an SES is located and also less than 50 dB(C) at the property lines of the parcel in which an SES is located. These noise limits shall apply only to normal operation of SES and supporting equipment, excluding the use of equipment inherent to general human habitation, such as automobiles.

2. The application shall include a pre-construction sound study that establishes the ambient sound conditions in the proposed project area and surrounding the project area with a perimeter of one mile. The sound study shall be performed by a certified independent acoustical engineer. The sound study must provide a description of the testing, sampling and process methodology used in determining the ambient measurement. The firm with which the engineer is associated shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the independent acoustical engineer shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA.

3. Within twelve months after the date when the project is fully operational the operator shall conduct a two-phase post-construction sound study conducted by an independent accredited sound engineer chosen by the Planning Commission and paid for by the applicant/operator. Post-construction sound level measurements shall be taken both with all SES systems running and with all SES systems off. The post-construction sound measurements shall be reported to the Planning Commission and made available for public review.

4. If sound measurements from the post-construction analysis show levels above what is permitted by this Ordinance, the operator shall take all necessary steps to remediate the problem.

F. Protection of Farmland and Revegetation of Disturbed Areas

1. Compaction of soil associated with the location of roads and installation staging areas for utility scale Ground Mounted SES on land zoned for agricultural use shall be minimized to the extent possible. Compaction of soil associated with the location of roads and installation staging areas for all Ground Mounted SES on land zoned for agricultural use that are classified either as prime farmland or farmland of statewide importance shall be avoided to the extent possible, and the soils shall be de-compacted as part of the decommissioning process.

2. Upon completion of construction and installation of the Ground Mounted SES, all temporary roads constructed by the applicant shall be removed, and all disturbed areas shall be graded and reseeded with short-term cover crops and sustainable, non-weed native vegetation in order to establish an effective ground cover and to minimize erosion and sedimentation. The permanent location of solar arrays on impermeable surfaces, including but not limited to gravel and asphalt, is prohibited. Temporary roads may remain upon request by the property owner.

G. Water Runoff

Concentrated discharge of stormwater runoff from SES facility solar arrays shall be carefully managed to prevent soil scouring, erosion, and contamination, the details of which shall be described in the Erosion Control/Stormwater Runoff Plan required in Section 415.17(D).

H. Historic Preservation.

Where an Integrated or Rooftop SES is proposed to be installed on a structure located within a designated historic district, the proposed installation may require a Certificate of Appropriateness issued by the Maysville/Washington Board of Architectural Review.

I. Signage

All signs pertaining to an utility scale SES project must comply with Section 411, Sign Regulations, unless otherwise specified or elsewhere in this Ordinance:

1. No sign shall exceed sixteen (16) square feet in surface area except development signs.

2. No sign shall exceed eight (8) feet in height.

3. The manufacturer's or operator's company name and/or logo may be placed upon the compartment containing the electrical equipment in accordance with customary practice.

4. An identification sign relating to the SES Project development shall be located on each side of the total SES Project area. There shall be at least one sign for every quarter-mile of fencing along the edge of the project footprint. Development signs must be sized and placed in compliance with Section 411 and must include seven (7) day per week contact information to reach a responsible representative of the operator with authority to resolve problems associated with development of a SES Project.

5. No other advertising signs or logos shall be placed or painted on any structure or facility with the exception of an identifying sign at the operation and maintenance facility.

J. Feeder Lines

Feeder lines (lines at distribution levels) installed as part of any SES shall not be considered an essential service. To wit, all communications and feeder lines installed as part of any SES shall be buried underground wherever possible unless organized with a cable management system that prioritizes safety and that loses none of the benefits of underground cable collection.

K. Other Appurtenances

No appurtenances other than those associated with the SES construction, operations, maintenance, decommissioning/removal, and permit requirements shall be connected to any SES structure except with express, written permission by the Board of Adjustment.

415.11 OPERATION AND MAINTENANCE

A. Physical Modifications

In general, any physical modification to any SES that alters major electrical

components shall require re-certification. Like-kind replacements shall not require re-certification. Therefore, prior to making any physical modification, the operator shall confer with the Planning and Zoning Administrator/Building Official for the City of Maysville to determine whether the physical modification requires re-certification.

B. Communications Interference

Prior to construction, a communications study to determine whether the proposed utility scale SES will have any adverse impacts on any public or public serving utility microwave transmissions shall be completed. If necessary, the applicant or successor shall mitigate interference with electromagnetic communications, such as Wi-Fi, radio, telephone, microwaves, or television signals caused by any SES. In addition, the applicant or successor shall comply with the following:

1. Post-Construction. If, after construction of the SES, the operator receives a written complaint that can be substantiated through an independent review related to interference with the broadcast of residential television, Wi-Fi, telecommunication, communication or microwave transmissions that existed prior to construction of the SES, the operator shall take reasonable steps to mitigate said interference. Interference with private telecommunications systems such as GPS shall be between the company and the complainant.
2. Failure to Remedy a Complaint. If an agreement to remedy a known interference is not reached within sixty (60) days, appropriate action will be taken. If further negotiations and/or mitigation measures to reduce or eliminate the interference do not remedy the problem it may result in requiring the SES to become inactive. This Section does not apply to interference with private telecommunications systems. See Complaint Procedure in subsection D below.

C. Declaration of Public Nuisance

Any utility scale SES declared to be a hazard to public safety (unsafe) by the City of Maysville or Mason County by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the approved Decommissioning Plan.

D. Complaint Procedure

1. All complaints regarding utility scale SES operation shall be logged by the operator. At minimum the log shall describe the name and address of the complainant, contact information of the complainant, when the complaint is received, a detailed description of the nature of the complaint, action taken to resolve the complaint and the date the complaint is resolved. If any complaint is considered by the operator to not be the responsibility of the operator a reason shall be provided to the complainant and so noted on the log. The log must be sent

to the Planning and Zoning Administrator and the operator at a frequency no less than once per quarter. Upon receipt of a formal complaint regarding noise, the SES operator shall be responsible for conducting a specific focused sound study to ascertain facts associated with a specific study to address the concern of the complainant and shall be financially responsible for the study. The acoustical engineering firm that conducts the complaint generated sound study must be different than that of the firm that conducted the pre- and post-construction studies and must also be similarly accredited.

2. If after sixty (60) days there is no resolution of a registered complaint the complainant may provide notice to the Planning and Zoning Administrator accompanied by a fee of \$250.00 that they intend to enter into binding arbitration of the unresolved complaint. Failure by the operator to perform an action specified by the arbitrator will be considered a violation of the zoning ordinance and subject to the applicable enforcement penalties and remedies. Upon receipt of a request for arbitration the Planning and Zoning Administrator will arrange for a time and place to meet with the arbitrator. Upon approval of a SES project the operator shall continually fund a non-reverting fund (for arbitration only), which will contain no less than \$5,000 dollars at any time, for the life of the SES project. Notification by Certified Mail of a deficiency in the balance of the fund to the operator shall be the responsibility of the Planning and Zoning Administrator. If upon notification that the fund is deficient, the operator shall have sixty (60) days to bring the fund back to the prescribed minimum amount. If the payment is not satisfied within the sixty (60) days, the SES project will be deemed in violation of the permit. The arbitrator shall be a member of the Kentucky Bar Association, be on the Roster of Court-Approved Mediators in the State of Kentucky and not be a citizen of the City of Maysville or Mason County, Kentucky. The Planning and Zoning Administrator may appear and present evidence on behalf of a complainant if requested to do so.

415.12 SCREENING AND BUFFERING PLAN

Prior to filing an application for a permit under this Ordinance, the applicant shall formulate a screening and buffering plan. Utility scale Ground Mounted SES shall have or have installed a visual buffer that will provide an effective visual and lighting screen between participating and non-participating properties and roadways. Existing buffers along the edge of an SES footprint shall be preserved and utilized when reasonably practical. Vegetative screening and buffers are preferred.

A. Content of Screening and Buffering Plan

1. Vegetation types/disposition. Detailed maps with renderings of the proposed vegetation used for screening and buffering, including timelines for the maturation of vegetative screening.
2. Modification/replacement of vegetation. Procedure outlined for the

replacement of vegetative screening that has become damaged or has died due to natural or man-made causes.

415.13 DECOMMISSIONING PLAN

Prior to filing an application for a permit under this Ordinance, the appropriate Executive authority with jurisdiction and the applicant or successor shall formulate a Decommissioning Plan outlining the responsibility for and anticipated means and cost of removing an utility scale SES at the end of their serviceable life or upon becoming a discontinued or abandoned use in order to ensure that the SES is properly decommissioned.

A. Content of Decommissioning Plan

1. **Assurance.** Written assurance that the SES will be properly decommissioned upon the expiration of the project life or in the event that the SES Project is abandoned.
2. **Cost Estimates.** The applicant or successor shall provide a contractor cost estimate for demolition and removal of the SES, and for the subsequent reclamation of the land within the project boundary. The cost estimates shall be made by a competent independent party, such as a professional engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning utility scale SES.
3. **Financial Assurance.** Prior to commencement of construction the applicant or its successor, as defined, will provide to the Executive of the appropriate jurisdiction a financial assurance for the cost of decommissioning SES facilities and related improvements to be constructed under the permit. The financial assurance shall be in the form of a performance bond, surety bond, letter of credit or other security instrument mutually acceptable to the Executive and the Applicant or Applicant's Successor. The amount of the bond or other similar security shall be set by the Executive and shall be at least equal to the estimated cost of fully completing the Decommissioning Plan approved by the Planning Commission, less the salvage value for the decommissioned facilities and components. In proposing the amount of the bond, the Applicant shall provide evidence of the decommissioning costs and the salvage value as determined by an independent, third-party person with experience and expertise in decommissioning an SES. The bond or other similar security shall be provided by an insurance company or surety that shall at all times maintain at least an "A" rating as measured by the A.M. Best rating agency and shall be noncancelable by the provider or the customer until completion of the Decommissioning Plan or until a replacement bond is secured.

If the SES facility for which a bond or similar security has been furnished is located on leased property or on land owned by the party responsible for completing the Decommissioning Plan, the bond or similar security shall name

the governing body of the local municipality in which the SES facility is located as the primary beneficiary of the bond. If the SES facility for which the bond or similar security has been furnished is located on leased property, the bond or similar security shall name the landowner(s) where the bonded facility is located as the secondary beneficiaries of the bond.

The Executive of the appropriate jurisdiction shall be regularly notified by the Applicant, the Applicant's Successor and the provider of financial assurance of any continuing financial obligation by the Applicant or Applicant's successor to keep said financial assurance in good standing. Any notice issued by the provider of financial assurance of failure or potential failure by the Applicant or the Applicant's successor to keep said financial assurance in good standing shall give the Executive of the appropriate jurisdiction valid cause to exercise the financial assurance to effect a decommissioning.

4. Abandonment by the Applicant or Successor. Written assurance that in the event of abandonment by the applicant or successor, the applicant or successor will provide an affidavit to the Executive of the appropriate jurisdiction representing that all easements and/or property leases for SES facilities shall contain terms that provide financial assurances, including access to the salvage value of the equipment, for the property owners to ensure that SES facilities are properly decommissioned within one (1) year of expiration or earlier of termination of the SES Project. The bond or similar security shall be forfeited if the party responsible for completing the Decommissioning Plan either fails to begin work on the plan within one (1) year of the date that the SES facility ceases to produce electricity for sale or fails to complete the Decommissioning Plan within two (2) years of the date that the SES facility ceases to produce electricity for sale. The local governing body may extend either of the deadlines for good cause shown. Any funds from a bond or similar security that are forfeited for failure to begin or complete a Decommissioning Plan in a timely manner shall only be used to complete the decommissioning of SES facilities on the property or properties for which the bond or similar security was posted.

5. Revegetation and soil de-compacting. Procedures for the removal of any temporary roads constructed for the purposes of decommissioning, the grading and reseeded of any disturbed areas with short-term cover crops and sustainable, non-weed native vegetation, and the de-compaction of soils on land zoned for agricultural use.

6. Updates. The Decommissioning Plan and the bond or similar security shall be reviewed, revised, and updated every five (5) years by the operator to reflect any significant change in circumstances, including but not limited to planned SES project life and property easements and leases, and changes to the estimated costs of effectuating the Decommissioning Plan or to the salvage value of the SES facility or its components. An update of the Decommissioning Plan shall be required upon the change of ownership of any SES facility.

B. Discontinuation and Abandonment

All utility scale SES shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Planning and Zoning Administrator outlining the steps and schedule for returning the SES to service. The Planning Commission may, at its discretion after one year of discontinued production, initiate an action to recommend to the Executive authority that it act to exercise the financial assurance to effect a decommissioning.

1. Removal. An applicant or successor's obligations shall include removal of all physical material pertaining to the project improvements to no less than a depth of four (4) feet below ground level within three hundred sixty-five (365) days of the discontinuation or abandonment of the SES or SES Project, and restoration of the project area to as near as practicable to a condition similar to its previous use immediately before construction of such improvements. Below ground level is understood to be from the existing grade. Covering with fill material does not constitute removal. Removal obligations shall be completed by the applicant or successor or by the City or County at the applicant's expense.

2. Written notices. Prior to implementation of procedures to effect the financial guarantee the appropriate Executive authority shall provide notice to the operator according to the terms of the required Decommissioning Plan. The operator of the project must provide notice to the appropriate Executive authority and to the Planning and Zoning Administrator of its intention to change ownership, abandon, decommission or suspend operations of an utility scale SES project.

3. Costs incurred by the City or County. If the City or County removes a SES structure and appurtenant facilities, it may sell the salvage to defray the costs of removal. By acceptance of a building permit, the applicant or operator grants a license to the appropriate Executive authority to enter the property to remove SES structures and appurtenant facilities pursuant to the terms of an approved Decommissioning Plan.

415.14 LIABILITY INSURANCE

The operator of any utility scale SES shall maintain a current general liability policy covering bodily injury and property damage and shall be required to name the City of Maysville or Mason County as an additional insured with dollar amount limits not less than \$2,000,000 per occurrence, \$5,000,000 in the aggregate, and a deductible which is reasonably available and which is mutually suitable to the applicant or successor and the City or County.

415.15 ENVIRONMENTAL INSURANCE

The operator of any utility scale SES shall maintain a current environmental insurance

policy covering loss and damages associated with the unexpected release of pollutants and subsequent environmental contamination, and shall be required to name the City of Maysville or Mason County as an additional insured with dollar amount limits not less than \$2,000,000 per occurrence, \$5,000,000 in the aggregate, and a deductible which is reasonably available and which is mutually suitable to the applicant or successor and the City or County.

415.16 APPLICATION PROCEDURES

- A. Within 90 days of receipt of an application to construct an utility scale SES:
 - 1. Local government staff and elected officials shall review the application;
 - 2. The Planning and Zoning Administrator shall provide the Planning Commission with a staff report based on review of the application;
 - 3. The Planning Commission shall hold a public hearing, at which it shall address the contents of the application and the staff report, and render a final decision to approve or deny the application. If minor changes are needed to the application, such as the unintentional omission of one or more of the application requirements described in 415.16(B), the Planning Commission may enter into a written agreement with the applicant for the submission of minor amendments to the application without requiring a new application for a specified date, at which a final decision will be rendered to approve or deny the amended application. If the application is denied, the Planning Commission shall state the reasons for the denial in its written decision and may make suggestions for a subsequent application, which, in its opinion, more appropriately address the concerns of local government officials, the public, and the Comprehensive Plan; and
 - 4. The Planning Commission shall notify the applicant in writing of its decision. If the Planning Commission fails to issue a final decision within 90 days, the application shall be deemed approved.

- B. An application for an utility scale SES shall include the following information:
 - 1. Contact information of project applicant including the name(s), address(es), and phone number(s) of the applicant(s), as well as a description of the applicant's business structure and overall role in the proposed project.
 - 2. Contact information of current project operator including the name(s), address(es), and phone number(s) of the operator(s), as well as a description of the operator's business structure and overall role in the proposed project, and including documentation of land ownership or legal control of the property on which the SES is proposed to be located. The Planning and Zoning Administrator shall be informed of any changes in ownership.

3. Legal description. The legal description, address, and general location of the project.
4. A General SES Project Description, including to the extent possible, information on solar panels to be used, including:
 - a. Number of solar panels/arrays;
 - b. Manufacturer of solar panels with brochure depiction;
 - c. Name plate generating capacity;
 - d. Solar panel/array heights;
 - e. Installation depths of solar arrays and any associated underground cabling;
 - f. The means of interconnecting with the electrical grid;
 - g. If the applicant has a purchase power agreement (PPA) name the entity; and
 - h. All related accessory structures.
5. Site Layout Plan. A site layout plan, drawn at an appropriate scale, showing distances pertaining to all applicable setback requirements. The site layout plan must be certified by a registered land surveyor, and depict:
 - a. Property lines, including identification of adjoining properties, with a notation indicating participating and non-participating landowners;
 - b. SES access roads;
 - c. Substations(s), and operational support meteorological tower(s) location;
 - d. Operation and maintenance building location (building to be permitted separately);
 - e. Electrical cabling;
 - f. Ancillary equipment, including batteries;
 - g. Occupied structures within a quarter mile of all proposed SES project areas;

- h. Distances from SES arrays to each setback requirement;
 - i. Location of all existing and planned public roads which abut or traverse the proposed site;
 - j. The location of all above-ground utility lines within a distance of one mile of any proposed SES structure;
 - k. The location of any historic or heritage sites within the SES Project Area;
 - l. The location of any wetlands based upon a delineation plan prepared in accordance with the applicable U.S. Army Corps of Engineers requirements and guidelines;
 - m. The location of any floodplain, floodway, or flood-prone areas based on flood maps prepared by the Federal Emergency Management Agency; and
 - n. A topographical map of the project area and a one-mile perimeter with contours of not more than ten (10) foot intervals.
6. A map from the Natural Resources Conservation Service identifying prime farmland and farmland of statewide importance (if in a district zoned as agricultural).
7. Sound Study. A sound study that identifies all known occupied structures within 1,000 feet of every proposed SES project area, including a description of the potential sonic impacts of any SES arrays or structures and on adjacent properties as per standards indicated in Section 415.10(E).
8. Communications Study. A communications study required by Section 415.11 (B).
9. Utility Notification. Evidence that the pertinent electric utility company has granted approval for interconnection.
10. Statement of Federal Aviation Administration compliance. A statement of compliance with all applicable Federal Aviation rules and regulations, including any necessary approvals for installations within proximity to an airport, and/or studies/compliance related to glare effects from SES.
11. Statement of Kentucky Airport Zoning Commission compliance. A statement of compliance with all applicable Kentucky Airport Zoning Commission rules and regulations and any necessary approvals for installations within proximity to an airport.

12. Compliance with Fish and Wildlife Requirements. Proof of correspondence and cooperation with wildlife agencies for the purposes of preventing harm to endangered or protected wildlife species and migratory birds and in compliance with the Endangered Species Act and the Migratory Bird Treaty Act. Applicants shall provide documentation that they are in communication and cooperation with the U.S. Fish and Wildlife Service and the Kentucky Department of Natural Resources.

13. Compliance with National Electrical Code. A line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is typically supplied by the manufacturer.

14. Compliance with Commonwealth of Kentucky Department for Environmental Protection Standards. Statements and results from environmental impact studies, including but not limited to geological surveys/studies, air quality studies, water quality studies, and waste studies. If no detailed geological survey or study is required by the Commonwealth of Kentucky Department for Environmental Protection, the applicant must provide such a study or survey using a certified independent geologist; the report of such a study or survey must draw conclusions regarding the anticipated geological effects of utility scale SES development in Mason County.

15. Good Neighbor Notice. An affidavit of service along with supporting documentation that indicates notification was given to all property owners (as per current records of the Mason County, PVA) in and within a quarter mile of the proposed footprint of the SES project no less than 30 days prior to the date of the public hearing. The Notice shall contain at minimum:

- a. A map showing the general layout of the project.
- b. An opportunity to meet with the petitioner or contact information whereby questions may be asked by the public.
- c. A list of steps that will be required to accomplish the project.

16. Any other item reasonably requested by the Planning and Zoning Administrator or the Building Official.

C. Dimensional variance applications for proposed utility scale SES facilities shall be reviewed and decided by the relevant board of adjustment through the process outlined in KRS Chapter 100 and Section 404 of this ordinance.

415.17 PRE-CONSTRUCTION REQUIREMENTS

Prior to the commencement of construction but subsequent to the issuance of a permit as provided for in section 415.16 herein, the following shall be required and materials submitted and reviewed by local government staff and elected officials, who shall certify that the submissions are in compliance with all applicable regulations:

- A. Federal Aviation Administration permits application and approval, if applicable.
- B. Decommissioning Plan as described in Section 415.13.
- C. Economic Development Agreement, Drainage, and Road Use and Maintenance Agreements required before issuance of an improvement location permit.

1. An Economic Development Agreement approved by the appropriate Executive authority shall be developed. The Executive authority may include other stakeholders in the negotiations at its discretion. The Economic Development Agreement includes all economic incentives, such as tax revenue, that will benefit the community.

2. A Road Use and Services Maintenance Agreement approved by the appropriate Executive authority that addresses, at minimum, the following:

a. A compilation of routes that will be used for construction and maintenance purposes, approved by the Maysville Director of Public Works and/or the Director of the Mason County Roads Department;

b. A documented baseline survey to determine existing road conditions prior to construction. The survey shall include photographs, or video, or a combination thereof, and a written agreement to document the condition of the public facility;

c. A surety bond or similar instrument approved by the County Attorney, in an amount sufficient to ensure that future repairs to public roads are completed to the satisfaction of the unit of local government. The cost of bonding is to be paid by the applicant. This requirement may be addressed in conjunction with the Economic Development Agreement;

d. A plan to address transportation routes and conditions during construction. If the route includes a public road, it shall be approved by the appropriate highway official(s) and school transportation departments;

e. A plan to avoid damage and to address repair to damaged roads;

f. A requirement that newly constructed SES access roads will not impede the flow of water; and

g. Provisions to address crop, field tile, waterway and other

infrastructure damage.

D. An Erosion Control/Stormwater Runoff Plan compliant with any stormwater quality management plan adopted by the State or local applicable jurisdiction.

E. A Utility Plan drawn to the same scale as the site layout plan illustrating the location of all underground utility lines associated with the total SES Project. This may be incorporated into the site plan. The Utility Plan shall also include water infrastructure with a written statement describing how water infrastructure will meet the SES facility's needs.

F. A Dust Control Plan detailing reasonable measures to be employed to control dust during construction of an utility scale SES Project. This may be incorporated into the Road Use and Services Maintenance Agreement.

G. Light Reflection Study. A light reflection modeling study that identifies all known occupied structures and the effect of any SES array on those structures as per Section 415.10(B).

H. Engineering Certification. For all SES, the manufacturer's engineer or another qualified registered independent professional engineer shall certify, as part of the building permit application, that the foundations and designs of SES structures are within accepted professional standards, given local soil and climate conditions. An engineering analysis of SES structures showing compliance with the applicable regulations and certified by a licensed independent professional engineer shall also be submitted. The analysis shall be accompanied by standard drawings of all SES structures. The engineering certification may be completed following submission of an improvement location permit application on condition of being required no later than thirty (30) days prior to initiation of construction.

I. Emergency Management Plan. A site plan that requires the local Emergency Management Director's approval and which describes emergency service access to SES arrays, related structures, batteries, and ancillary equipment and detailed procedures for any potential hazardous emergencies caused by natural or man-made disasters that could occur within the SES facility, such as battery fires due to lightning strikes or equipment failures. This plan includes but is not limited to procedures for the evacuation of local citizens within the affected area and the clean-up of hazardous materials and waste created by any such disasters.

415.18 POST-CONSTRUCTION REQUIREMENTS

A. Post-construction, the operator shall comply with the following provisions:

1. Road Repairs. Any road damage caused by the construction of project equipment, the installation of the same, or the removal of the same, shall be repaired as per the Road Use and Services Maintenance Agreement.

2. **As-Built Plans Requirement.** Whereupon completion of all development, the exact measurements of the location of utilities and structures erected during the development are necessary for public record and shall therefore be recorded. The applicant or successor shall submit a copy of the final construction plans (as-built plans), as amended, to the Building Official with the exact measurements shown thereon. The Building Official, after being satisfied that the measurements are substantially the same as indicated on the originally approved final plan(s), shall approve, date and sign said Construction Plans for the project, which the applicant or successor shall then record.

3. **Staging Area Remediation.** Any and all areas temporarily used for storage, parking, and administration during the construction of SES facilities must be returned to their previous conditions and all negative environmental externalities must be remediated.

4. **Post Construction Sound Study.** Within twelve months after the date when the project is fully operational the operator shall conduct a two phased post-construction sound study conducted by an independent accredited sound engineer chosen by the Planning Commission and paid for by the operator. Post-construction sound level measurements shall be taken both with all SES systems running and with all SES systems off. The post-construction sound measurements shall be reported to the Planning Commission and made available for public review.

5. **Change in Ownership.** It is the responsibility of the operator listed in the application to inform the Planning and Zoning Administrator of all changes in ownership and operation of the SES facility during the life of the project, including the sale or transfer of ownership or change in operator.

Notes/Comments

- The SES ordinance will create the corresponding entry into the Industrial/Manufacturing land use charts:

Industrial / Manufacturing	R-1	R-2	R-3	R-4	TH-1	B-1	B-2	B-3	D-1	P-1	A-1	A-2	I-1	I-2	MH	C	RR-1	RR-2	I-3	
Solar Energy System																				
Integrated*	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Rooftop*	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Small Scale*	P	P	P	P	X	P	P	P	X	P	P	P	P	P	P	P	P	P	P	P
Intermediate Scale**	X	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	P
Large Scale**	X	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	P

*Where an Integrated or Rooftop SES is proposed to be installed on a structure located within a designated historic district, the proposed installation may require a Certificate of Appropriateness issued by the Maysville/Washington Board of Architectural Review.

**Utility scale SES facilities are permitted ONLY upon approval from the Mason County Joint Planning Commission.