

BATTERY ENERGY STORAGE SYSTEMS (BESS) SITING ORDINANCE

(I) DEFINITIONS

- A. AIMA: Agricultural Impact Mitigation Agreement
- B. ANSI: American National Standards Institute
- C. Battery(ies): A single cell of group of cells connected electrically in a series, in a parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this ordinance, batteries utilized in consumer products are excluded from these requirements.
- D. Battery Energy Storage System (BESS): One or more devices, assembled, capable of storing energy to supply electrical energy at a future time. The term includes, but is not limited to, electrochemical, thermal, and electromechanical technologies. For the purposes of this ordinance, a battery energy storage system is classified as a “Tier 1” or “Tier 2” Battery Energy Storage System as follows:
 - Tier 1** – A BESS that has an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consists of only a single energy storage system technology. A rechargeable BESS typically used to provide standby or emergency power and/or uninterruptable power supply, load shedding, load sharing, or similar capabilities relating to the energy consumed by a residence, farm operation or other businesses on site. These are permitted in all zoning districts and shall only be subject to the permitting regulations set forth in the Fulton County Zoning Ordinance of 2009.
 - Tier 2** – A BESS that has an aggregate energy capacity greater than 600 kWh or is comprised of more than one battery storage technology in a room or enclosed area. Tier 2 BESS are permitted only in Agricultural Conservation & Industrial Zoning classifications.
- E. Cell: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.
- F. Commissioning: A systematic process that provides documented confirmation that a BESS functions according to the intended design criteria and complies with applicable code requirements.
- G. Dedicated-Use Building: A building that is built for the primary intention of housing battery energy storage equipment.
- H. Fire Code: The fire code of the State of Illinois as currently in effect and as hereafter amended from time to time.
- I. NEC: National Electric Code
- J. NFPA: National Fire Protection Association

- K. Non-Dedicated-Use Building: All buildings that contain a BESS and do not comply with the dedicated-use building requirements.
- L. Non-Participating Property: Real property that is not a participating property.
- M. Non-Participating Residence: A residence that is located on non-participating property and that is existing and occupied on the date that an application for a permit to develop a battery energy storage system is filed with the county.
- N. Occupied Community Building: Any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the battery energy storage system is filed with the county: a school, place of worship, day care facility, public library or community center.
- O. Operator: The person or entity responsible for the day-to-day operation and maintenance of a battery energy storage system, including any third-party subcontractors. All references to Operator in the Ordinance shall include Operator's successors-in-interest and assigns.
- P. Owner: The person or entity or entities:
 - (i) with an equity interest in a battery energy storage system, including their respective successors-in-interest and assigns
 - (ii) who is acting as a developer of the BESS by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the BESS, regardless of whether the person will own or operate the BESS.

The Owner DOES NOT mean:

- (i) the property owner from whom land is leased for the purpose of locating a battery energy storage system (unless the property owner has an equity interest in a BESS)
 - (ii) any person holding a security interest in a battery energy storage system solely to secure an extension of credit, or a person foreclosing on such security interest, provided that after foreclosure, such person seeks to sell a battery energy storage system at the earliest practicable date.
- Q. Participating Property: Real property that is the subject of a written agreement between a BESS owner and the owner of the real property that provides the BESS owner with an easement, option, lease, or license to use the real property for the purpose of constructing a BESS. Participating property also includes real property that is owned by a BESS owner for the purpose of constructing a battery energy storage system.

- R. Participating Residence: A residence that is located on participating property and that is existing and occupied on the date that an application for a permit to develop a battery energy storage system is filed with the Zoning Board of Appeals.
- S. “Fulton County Zoning Ordinance of 2009” or “Zoning Ordinance” means the Fulton County Zoning Ordinance of 2009, as amended.

(II) APPLICABILITY

- A. The requirements of this Ordinance shall apply to all BESS permitted, installed, or modified pursuant to the Fulton County Zoning Ordinance after the effective date of this Ordinance.

(III) PROHIBITION

- A. No BESS shall be constructed, erected, installed or located within the county, unless prior siting approval has been obtained for each individual battery energy storage system or for a group of battery energy storage systems under a joint siting application pursuant to this Ordinance.

(IV) CONDITIONAL USE PERMIT APPLICATION

A. Requirements for Tier 1 Battery Energy Storage Systems

- 1. Tier 1 BESS shall be permitted in all zoning districts, subject only to the permitting regulations set forth in the Fulton County Zoning Ordinance of 2009.

B. Requirements for Tier 2 Battery Energy Storage Systems

- 1. Tier 2 BESS shall require a Conditional Use Permit application to the Fulton County Zoning Board of Appeals and the permitting regulations set forth in the Zoning Ordinance of 2009.
- 2. The Conditional Use Permit application shall contain or be accompanied by the following information:
 - a. A battery energy storage system summary, containing a general description of the project, including, but not limited to:

- (i) The approximate total power capacity, energy capacity, and discharge duration of the BESS
 - (ii) The type(s) of battery(ies) used, and their potential manufacturer(s)
 - (iii) A preliminary equipment specification sheet that documents the proposed BESS components, inverters and associated electrical equipment that are to be installed.
 - (iv) The maximum height of any battery storage container, racking system or dedicated-use building
 - (v) An electrical diagram detailing the BESS layout, associated components, and electrical interconnection methods, with all NEC compliant disconnects and other current devices.
 - (vi) A project site plan, project phasing plan and project construction plan
 - (vii) The general location of the project.
- b. A description of the Applicant, Owner and Operator, including their respective business structures;
 - c. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), if known, and documentation demonstrating land ownership or legal control of the property;
 - d. A site plan for the BESS showing the planned location of the BESS and all related components, including legal descriptions for each site, Participating and Non-Participating Residences, Occupied Community Buildings, parcel boundary lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, Substation(s), operations and maintenance buildings, electrical cabling to the Substation(s) and/or energy generation facility, ancillary equipment, third party transmission lines, the location of any wetlands, flood plain, drainage structures (including surface ditches and subsurface drainage lines), archaeological sites, underground mines, scenic and natural areas within one thousand five hundred (1,500) feet of the proposed BESS, and the layout of all structures within the geographical boundaries of any applicable setback.
 - e. A proposed Decommissioning Plan for the BESS.
 - f. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance.

- g. An Agricultural Impact Mitigation Agreement (AIMA) executed between the Applicant and the Illinois Department of Agriculture.
 - h. Results and recommendations from the Illinois Department of Natural Resources obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool.
 - i. Results of any United State Fish and Wildlife Service’s Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with an applicable United States Fish and Wildlife Service’s Energy Development wildlife guidelines.
 - j. Information demonstrating that the BESS will avoid protected lands.
 - k. Waivers from the setback requirements executed by the Occupied Community Building owners and/or the Non-Participating Property owners, bearing a file stamp from the Fulton County Recorder’s Office, confirming that the waiver was recorded against the title to the affected real property.
 - l. Any other information normally required the Fulton County Zoning Board of Appeals as part of its permitting requirements for siting buildings or other structures.
 - m. Any other information requested by the Fulton County Zoning Board of Appeals or the County consultants, that is necessary to evaluate the siting application and operation of the BESS, and to demonstrate that the BESS meets the regulations in this Ordinance, including the Conditional Use Permit standards set forth below.
3. Material changes to the application are not permitted once the Notice of Public Hearing has been published, unless requested or permitted by the County; and
 4. The Applicant shall submit twelve (12) copies of the Conditional Use Permit application to the Zoning Board of Appeals, and at least one (1) copy shall be in electronic format.

(V) DESIGN AND INSTALLATION

A. Design Safety Certification

1. BESS shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from the Underwriters Laboratories (UL), or an equivalent third party. All batteries, cells, panels, racking systems, containers, and all anchoring systems shall be new equipment commercially available; no used or experimental equipment shall be

used without the approval of a variance by the Fulton County Zoning Board of Appeals.

2. Following the granting of siting approval under this Ordinance, a structural engineer, as well as an electrical engineer, shall certify, as part of the BESS permit application process that the design of the BESS is within accepted professional standards, given local soil, subsurface and climate conditions.

B. Electrical Components

1. All electrical components of the BESS shall conform to all applicable local, state and national codes, and relevant national and international standards (ANSI, NEC, and International Electrical Commission).

C. Height

1. No component of a battery, cell, racking system, container or Dedicated-Use Building shall exceed twelve (12) feet in height above ground level.

D. Aesthetics and Lighting

1. All on-site utility lines shall be placed buried underground to the extent feasible and as permitted by the servicing utility, except for the main service connection at the utility company right-of-way (ROW).
2. Lighting: Lighting of the BESS shall be shielded and downcast, such that the light does not spill onto any adjacent parcels.
3. Vegetation: Vegetation shall be cleared of all combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or other similar types of vegetation shall be permitted to be exempt, provided that they DO NOT form a means of readily transmitting fire.

E. Fencing and Security

1. A fence of at least six (6) feet and not more than twenty-five (25) feet in height shall enclose and secure the BESS.
2. All gates must be clearly labeled with a numbering scheme as approved by the Fulton County 911 Office and updated annually.
3. All locked gates with access to a public road must be locked with a lock that utilizes a numeric code or be equipped with a Knox box. If equipped with a lock

utilizing a numeric code, that code must be on file with the Fulton County 911 Office, and updated annually.

4. A BESS that is enclosed within the project area of a Commercial Solar Energy Facility shall not require additional fencing.

F. Signage

1. Signage shall be in compliance with ANSI Z35 (American National Standards Institute Specifications for Accident Prevention) and shall include the type of technology associated with the BESS, any special hazards associated, the type of suppression system installed for the BESS, and 24-Hour emergency contact information, including reach-back phone numbers. These sign(s) shall be placed at all gates of entrance to the facility, as well as on the entrance to any buildings that may house any components of the BESS.
2. As required by the NEC (National Electric Code), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface.
3. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers, substations and in a clearly visible area on all Dedicated-Use Buildings.

G. Setback Requirements

1. The BESS shall be sited as follows, with setback distances measured from the nearest edge of any component of the facility:
 - a. Occupied Community Buildings and Dwellings on Non-Participating Properties: five hundred (500) feet from the nearest edge of any component of the BESS, to the nearest point on the outside wall of the structure.
 - b. Non-Participating Residences: five hundred (500) feet from the nearest edge of any component of the BESS, to the nearest point on the outside wall of the structure.
 - c. Non-Participating Properties: two hundred (200) feet from the nearest edge of any component of the BESS, to the nearest point on the property line of Non-Participating Property.
 - d. Public Road Rights-of-Way (ROW): two hundred (200) feet from the nearest edge of any component of the BESS, to the nearest edge of the public road Right-of-Way.

2. The setback requirements for Non-Participating Properties may be waived by the written consent of the owner(s) of each affected Non-Participating Property. The Applicant does not need to obtain a variance from the Fulton County Zoning Board of Appeals upon waiver by the property owner of any of the above setback requirements. Any waiver of the above setback requirements shall run with the land and shall be recorded at the expense of the Applicant, with Land Records, in the Fulton County Recorder's Office.

H. Compliance with Additional Regulations

1. Nothing in this Ordinance is intended to preempt other applicable State and Federal laws and regulations.

I. Use of Public Roads

1. An Applicant proposing to use any County, municipality, Township or Village road(s), for the purpose of transporting BESS parts, components or related Substation parts or equipment for construction, operation or maintenance of the BESS or Substation(s) shall:
 - a. Identify all such public roads
 - b. Obtain applicable weight and size permits from the relevant governmental agencies prior to construction.
 - c. Obtain applicable Entrance and Utility permits from relevant governmental agencies prior to construction, should they be required.
2. To the extent an Applicant must obtain a weight or size permit from the County, municipality, Township or Village, the Applicant shall:
 - a. Conduct a third-party pre-construction baseline survey to determine existing road conditions for assessing potential future damage; and
 - b. Any proposed public roads that will be used for construction purposes shall be identified and approved in writing by the respective Road District Commissioner or the County Engineer prior to the granting of the Conditional Use Permit. Traffic for construction purposes shall be limited to these roads. All overweight and/or oversized loads to be transported on public roads may require a permit from the respective highway authority. Any road damage caused by the transport of the BESS's equipment, the installation, maintenance or removal, must be completely repaired to the reasonable satisfaction of the Road District Commissioner or the County Engineer. The Road District Commissioner or County Engineer may choose to require remediation of road repair upon completion of the BESS, in addition to being

authorized to collect fees for overweight and/or oversized load permits. Further, financial assurance in an amount to be fixed by the Road District Commissioner or County Engineer to ensure the Road District or the County that future repairs are completed to their reasonable satisfaction shall be provided. Applicant shall submit a draft form of said financial assurance with the application for a Conditional Use Permit.

c. Enter into a road use agreement with the County and each affected Road District that includes the following provisions, at a minimum:

1. Project layout map;
2. Transportation impact analysis;
3. Pre-construction plans
4. Project traffic map;
5. Project scope of repairs;
6. Post-construction repairs;
7. Insurance;
8. Financial Security in forms and amounts acceptable to the County;

The road use agreement shall require Applicant to be responsible for the reasonable cost of improving roads used to construct the BESS and the reasonable cost of repairing roads used by the facility owner during construction of the BESS, so that those roads are in a condition that is safe for the driving public after the completion of the BESS construction. Roadways improved in preparation for and during the construction of the BESS shall be repaired and restored to the improved condition at the reasonable cost of the developer if the roadways have degraded or were damaged as a result of construction-related activities.

3. All repairs and improvements to public roads and roadway appurtenances shall be subject to the prior approval of the County or Road District before being made and shall also be subject to inspection and acceptance by the County or Road District after such repairs and improvements are completed. The County's road use agreement, and any further agreements contemplated therein, regarding the maintenance and repair of public roads and highways, must be approved by the County Board prior to the Zoning Board of Appeals/Zoning Department approval of any applicable permitting regulations set forth in the Fulton County Zoning Ordinance, and any other applications related to the construction of the proposed BESS.

J. Site Assessment

1. To ensure that the subsurface conditions of the site will provide proper

support for the BESS and soil restoration, the Applicant, at its expense, shall provide soil and geotechnical boring reports to the County Engineer as part of its BESS permit application process. The Applicant shall follow the guidelines for Conservation Practices Impact Mitigation submitted by the County Soil and Water Conservation District (or equivalent regulatory agency). Also, the Applicant shall submit grading plans for the proposed BESS for review and comment by the County Soil and Water Conservation District prior to the issuance of any permit for the construction of said systems, as set forth in the Zoning Ordinance.

K. Noise Levels

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

L. Agricultural Impact Mitigation

1. The Applicant, at its expense, shall enter into an Agricultural Impact Mitigation Agreement, consistent with what is set forth in 505 ILCS 147/15(a), with the Illinois Department of Agriculture prior to any public hearing required before a siting decision on the BESS application. All impacted agricultural land, whether impacted during construction, operation, or decommissioning activities, must, at a minimum, be remediated by the Applicant pursuant to the terms of the Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture. The Applicant shall submit the executed Agricultural Impact Mitigation Agreement to the Zoning Board of Appeals as part of the Conditional Use Permit application.

M. As-Built Map and Plans

1. Within sixty (60) calendar days of completion of construction of the BESS, the Applicant or Operator shall deliver "as-built" maps, site plan and engineering plans for the BESS that have been signed and stamped by a Professional Engineer and a licensed surveyor.

N. Engineer's Certificate

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

O. Conformance with Approved Application and Plans

1. The Applicant shall construct and operate the BESS in substantial conformance with the construction plans contained in the Zoning Board of Appeals approved Conditional Use Permit application(s), conditions placed upon the operation of the Facility, this ordinance and all applicable state, federal and local laws and regulations.

P. Additional Terms and Conditions

1. All technical submissions as defined in the Professional Engineering Practice Act of 1989 (225 ILCS 325/4(w)) and contained in the Conditional Use Permit Application shall be prepared and signed by an Illinois Professional Engineer (or structural engineer) for the relevant discipline.
2. The applicant shall obtain the services of a certified court reporter to record the meeting and issue the report to the applicant and to Fulton County. The cost of the reporter will be borne by the applicant.
3. The County may retain a qualified, independent code inspector or professional engineer both to make appropriate inspections of the BESS during and after construction and to consult with the County to confirm that the construction, substantial repair, replacement, repowering and/or decommissioning of the BESS is performed in compliance with applicable electrical and building codes. The cost and fees so incurred by the County in retaining said inspector or engineer shall be promptly reimbursed by the Applicant of the BESS.
4. The Conditional Use Permit granted to the Applicant shall bind and insure to the benefit of the Applicant, its successors-in-interest and assigns. If any provision in this Ordinance, or conditions placed

upon the operation of the BESS is held invalid, such invalidity shall not affect any other provision of this Ordinance that can be given effect without the invalid provision and, to this end, and the provisions in this Ordinance are severable.

5. The Applicant shall provide an executed road use agreement between the Applicant and the appropriate governing road and highway jurisdictions or the Illinois Department of Transportation, to the County showing approved entrances prior to the issuance of any BESS permits, such permits being subject to the permitting regulations set forth in the Zoning Ordinance.

(VI) OPERATION

A. Maintenance

1. Annual Report. The Applicant must submit, on an annual basis on the anniversary date of the Conditional Use Permit application, an operation and maintenance report to the Zoning Board of Appeals. The report shall contain the following information: (i) a general description of any physical repairs, replacements or modification(s) to the BESS and/or its infrastructure; (ii) complaints pertaining to setbacks, noise, appearance, safety, lighting and use of any public roads received by the Applicant concerning the BESS and the resolution of such complaints; (iii) calls for emergency services; (iv) status of liability insurance; and (v) a general summary of service calls to the BESS facility. Failure to provide the annual report shall be considered a material violation of this Ordinance and subject to Article IX (Remedies).
2. Re-Certification. Any physical modification to, retrofits or replacement of an existing BESS that increase the total battery energy storage system designed discharge duration or power rating shall require re-certification under Section V (A)(1) of this Ordinance. Like-kind replacements and modifications that are made in the ordinary course of operations, including expected repairs and warranty items, shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement or other modifications made in the ordinary course of operations), the Applicant shall confer with a relevant third-party certifying entity identified in Section V, paragraph 1, of this Ordinance to determine whether the physical modification requires re-certification.

B. Coordination with Emergency Responders:

1. The Applicant shall submit to the local emergency responders a copy of the Site Plan, Standard Operating Procedures (SOPs) and Standard Operating Guidelines (SOGs), and any amendments to such documents, for the BESS so that the local law enforcement, fire protection district and rescue units, emergency medical service providers and emergency management service providers that have jurisdiction over each BESS site may evaluate and coordinate their emergency response plans with the Applicant of the BESS.
2. The Applicant shall provide a map of the facility labeling the location of the following;
 - Roads: The Applicant shall work with the Fulton County 911 Office to develop a private lane naming and addressing schema.
3. The Applicant shall provide the Fulton County Zoning Office and 911 Office with any GIS Shape Files created by the Applicant for the facility to assist with creating a map of the BESS. In the event GIS shape files of the BESS are not available, the Applicant agrees to allow Fulton County 911 Staff access to the facility to create a digital map.
4. The Applicant, at its expense, shall provide annual training for, and the necessary/specialized equipment to, the Operator and local emergency response authorities and their personnel so that they can properly respond to a potential emergency at the BESS Facility.
5. In the event of a response for prevention cleanup, containment, or abatement of an actual or potential fire, spill and/or release of hazardous materials, the owner and/or Operator of the site shall pay for all costs and expenses incurred as a result of such response including, but not limited to, actual labor costs of the response organizations and/or emergency management personnel involved in the response thereto for prevention, mitigation, containment, cleanup or abatement of the actual or potential discharge of hazardous materials, cost of equipment operation, damage and loss, cost of material obtained directly by the response organization and cost of any contract labor and material incurred by any governmental body or emergency response agency.

For the purposes of this section, the provisions of 430 ILCS 55 “The Hazardous Material Emergency Response Reimbursement Act” shall also apply.

6. The Applicant and the Operator shall cooperate with all local emergency responders to develop an emergency response plan. The plan shall include, at a minimum, 24-hour contact information (names, titles, email addresses, cell phone numbers) for the Applicant and the Operator and at least three (3) designated BESS representatives (a primary representative with two (2) alternate representatives, each of whom are on-call "24 hours per day / 7 days per week | 365 days per year"). Any change in the designated BESS representative or his/her contact information shall be promptly communicated to the County. The content of the emergency response plan, including the 24-hour contact information, shall be reviewed and updated on an annual basis.
 7. Nothing in this section shall alleviate the need to comply with all other applicable life safety, fire / emergency laws and regulations.
- C. Water, Sewer, Materials Handling, Storage and Disposal
1. All solid wastes related to the construction, operation and maintenance of the BESS shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
 2. All hazardous materials related to the construction, operation and maintenance of the BESS shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.
 3. The BESS shall comply with existing septic and well regulations as required by the County Health Department and the State of Illinois Department of Public Health.
- D. Drainage Systems
1. The Applicant, at its expense, will repair, in a prompt and timely manner, all waterways, drainage ditches, agricultural drainage systems, field tiles, or any other private and public infrastructure improvements damaged during construction, maintenance and operation phases of the BESS in accordance with the Agricultural Impact Mitigation Agreement.

(VII) LIABILITY INSURANCE AND INDEMNIFICATION

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

The Applicant shall defend, indemnify and hold harmless the County and its officers, appointed and elected officials, employees, attorneys, engineers and agents (collectively and individually, the "Indemnified Parties") from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees relating to or arising out of the issuance of the Conditional Use Permit or the construction, operation, maintenance and removal of the BESS including, without limitation, liability for property damage or personal injury (including death or illness), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence) or any acts or omissions of the Applicant, the Owner or the Operator under this Ordinance or the Conditional Use Permit, except to the extent any such claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities arise from the negligence or intentional acts of such Indemnified Parties. This general indemnification shall not be construed as limiting or qualifying the County's other indemnification rights available under the law.

(VIII) DECOMMISSIONING AND SITE RECLAMATION PLAN REQUIRED

- A. Applicant (or Owner, if different from Applicant) must submit a Decommissioning Plan with cost estimation to the Zoning Board of Appeals as part of the siting application and provide testimony supporting the calculation of costs provided in said plan during the public hearing on the application. Prior to receiving any permit subject to the regulations set forth in the Zoning Ordinance for the BESS, the Applicant or Owner shall provide a Decommissioning Agreement and post the required Financial Assurances for the benefit

of the County. Periodically, and as required by the Agricultural Impact Mitigation Agreement, the Owner must update the Decommissioning Plan, cost estimations and provide update Financial Assurances to the benefit of the County.

(IX) REMEDIES

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

(X) FEE SCHEDULE AND PERMITTING PROCESSES

A. Application Fees

1. Conditional Use Permit Fees

- a. Prior to processing any Application for a BESS Facility, the Applicant must submit a payment to the Zoning Department for the Conditional Use Permit Application Fee of:
 - (i) 601kW – 2MW \$5,000
 - 2MW and above \$5,000 plus \$1,000 per for every MW over 2MW, not to exceed \$250,000.
- b. All public hearing notices and mailings required to be executed prior to the issuance of a Conditional Use Permit shall be the

responsibility of the Applicant. Proof of service regarding the issuance of these notices and/or mailings shall also be supplied to the Zoning Board of Appeals, prior to the issuance of a Conditional Use Permit.

- c. Should the actual costs to the County exceed the submitted Conditional Use Permit Application Fee, the Applicant shall be responsible for those additional costs. No hearings on an Application shall be conducted nor final decisions rendered on an Application if there are Application fees or costs due to the County.

2. Zoning Permit Fees

- a. Prior to the issuance of a Zoning Permit, Construction Permit and/or Building Permit, the Permit Applicant must remit a Zoning Permit Fee based upon the following schedule:

(i)	5kW – 50kW	\$150
	51kW – 100kW	\$300
	101kW – 600kW	\$500
	601kW – 999kW	\$3,000
	1MW and above	\$2,000 per MW

3. All Costs to be Paid by Applicant or Owner

- a. In addition to all fees noted above, the Applicant or Owner shall pay all costs incurred by the County, including but not limited to, those costs associated with all offices, boards and commissions of the County, and third-party costs incurred by the County. This includes, but is not limited to, the direct or indirect costs associated with the hearing, permitting, operations, inspections, decommissioning, litigation, disputes, and/ or negotiations.

(XI) HEARING FACILITATOR

- A. The Zoning Board of Appeals may engage the services of a hearing facilitator. The hearing facilitator shall be an independent contractor who shall conduct a hearing in accordance with all applicable rules of the board and the county but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, admissibility of evidence and the propriety of any arguments.

- 1. The hearing facilitator shall be an attorney, licensed to practice in the State

of Illinois. The Applicant shall reimburse the county for the fees and costs charged by the facilitator.

(XII) HEARING FACTORS

- A. The Zoning Board of Appeals may approve a BESS Conditional Use Permit application, if it finds the evidence complies with state and federal law and regulations, and with the standards of this zoning code including the factors listed below. The factors below are applied as a balancing test, not individual requirements to be met.
1. The establishment, maintenance or operation of the BESS will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare;
 2. The BESS will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values of surrounding properties;
 3. The establishment of the BESS will not impede the normal and orderly development and improvement of the surrounding properties;
 4. Adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;
 5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
 6. The proposed BESS is not contrary to the objectives of the current comprehensive plan of the County (if any); and
 7. The BESS shall, in all other respects, conform to the applicable regulations of this Ordinance and the zoning district in which it is located (if a zoning ordinance is in effect), except as such regulations may, in each instance, be modified pursuant to the recommendations of and approved by the Zoning Board of Appeals.
- B. Conditional Use Permit Conditions and Restrictions.
1. The Zoning Board of Appeals may stipulate conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, and operation of the BESS as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this Ordinance.

C. Revocation.

1. In any case where a Conditional Use Permit has been approved for a BESS Facility, the Applicant shall apply for a BESS permit subject to the permitting regulations set forth in the Zoning Ordinance of 2009, as well as all other permits required by other government or regulatory agencies to commence construction, and commence and actively pursue construction of the Project within thirty-six (36) months from the date of the granting of the Special Use Permit. If the Applicant fails to apply for any of the aforementioned permits from the County and all other permits required by other government or regulatory agencies prior to construction and/or fails to commence and actively pursue construction of the Project within the thirty-six (36) month period, then without further action by the Zoning Board of Appeals, the Conditional Use Permit authorizing the construction and operation of the BESS shall be automatically revoked and void. Upon written request supported by evidence that the Applicant has diligently pursued issuance of all necessary government and regulatory permits for the Project required to commence construction and that any delay in commencement of construction of the Project is due to conditions out of his/her/its control, the Zoning Board of Appeals, in its sole discretion, may extend the above thirty-six (36) month period by passage of an ordinance that amends the Conditional Use Permit.
2. The Conditional Use Permit shall be subject to revocation if the Applicant dissolves or ceases to do business, abandons the BESS or the BESS ceases to operate for more than twelve (12) consecutive months for any reason.
3. Subject to the provisions of Article IX (Remedies), a Conditional Use Permit may be revoked by the Zoning Board of Appeals if the BESS is not constructed, installed and/or operated in substantial conformance with the Zoning Board of Appeals approved Project plans, the regulations of this Ordinance and the stipulated Conditional Use Permit conditions and restrictions.

D. Transferability; Owner or BESS Permittee.

1. The Applicant shall provide written notification to the Zoning Board of Appeals at least thirty (30) days prior to any change in ownership of a BESS of any such change in ownership. The phrase "change in ownership of a Commercial Solar Energy Facility" includes any kind of assignment, sale; lease, transfer or other conveyance of ownership or operating control of the Applicant, the BESS or any portion thereof. The Applicant or successors-in-interest or assignees of the Conditional Use Permit, as applicable, shall remain liable for compliance with all conditions, restrictions and obligations contained in the Conditional Use Permit,

the provisions of this Ordinance and applicable County, state and federal laws.

E. Modification.

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

(XIII) PERMIT EFFECTIVE DATE

- A. The Conditional Use Permit shall become effective upon approval of the ordinance by the Zoning Board of Appeals.

(XIV) DUPLICATIVE OBLIGATIONS

- A. This Ordinance shall work in conjunction with all other Fulton County Ordinances. A variance or waiver of any requirements created hereunder, that are redundant or duplicative, may be granted by the Zoning Board of Appeals.

(XV) INTERPRETATION

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

(XVI) SEVERABILITY

- A. If any section, paragraph, clause, phrase or part of this Ordinance is for any reason held invalid by any court or competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these regulations.

(XVII) EFFECTIVE DATE

- A. This Ordinance shall be in full force and effect from and after its passage, publication and approval as required by law.

That upon passage, this Battery Energy Storage System Siting Ordinance for Fulton County shall be known as Section 9.5 of the Fulton County Zoning Ordinance of 2009.