

Beverly Howard

STATE IMPOSED RHSP:

Cumberland County, Illinois
Battery Energy Storage Systems (BESS) Ordinance # 25-04

SITING OF BATTERY ENERGY STORAGE SYSTEMS (BESS)

A PROCESS FOR REGULATING THE ISSUANCE OF SITING PERMITS FOR BATTERY
ENERGY STORAGE SYSTEMS (BESS)

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0. AUTHORITY

This Ordinance is adopted in accordance with statutory authority as set forth under applicable Illinois law (e.g., Article VII, Section 7 of the Illinois Constitution of 1970, and the Illinois Counties Code, 55 ILCS 5/ et seq.) including but not limited to Section 5-12020 of the Illinois Counties Code (55 ILCS 5/5-12020).

1. PURPOSE

The purpose of this ordinance is to create a process whereby a BESS siting permit may be issued within the county, allowing development of energy resources, while protecting the public health, safety, and community welfare of the residents of Cumberland County by promoting the safe, effective, and efficient use of battery energy storage systems. Also, to avoid adverse impact to important areas such as agricultural land, endangered species habitats, conservation land, and other sensitive

lands. This ordinance shall not be deemed to nullify any provisions of local, state or federal law. Applicants shall also adhere to all requirements set forth within 55 ILCS 5/5-12020 and all other applicable State and Federal regulations.

2. APPLICABILITY

This ordinance applies to all unincorporated lands within the boundaries of Cumberland County outside of the zoning jurisdiction of a municipality and governs the siting of Battery Energy Storage Systems. The requirements of this ordinance shall apply to any BESS permitted, installed, or modified in the county after the effective date of this ordinance. Any BESS connected or integrated into a commercial solar energy facility or commercial wind energy facility shall be governed by the requirements of all applicable solar or wind ordinances.

3. PROHIBITION

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.

4. DEFINITIONS

AIMA: Agricultural Impact Mitigation Agreement (The applicant shall enter into the applicable AIMA, if available, from the State of Illinois.)

ANSI: American National Standards Institute.

Applicant: The entity or person who submits to the County, pursuant to the terms of this Ordinance, an application for the siting of any Battery Energy Storage Systems (BESS).

Battery(ies): A single cell or 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.

Battery Energy Storage System (BESS): One or more devices, assembled together, capable of receiving electrical energy from the grid or other electrical resource and storing it for later injection back to the grid. 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, which is a rechargeable BESS 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 on site, farm operation on site, or other business on site.

Tier 2 - A BESS that has an aggregate energy capacity greater than 600 kWh or is comprised of more than one battery storage system technology in a room or enclosed area.

Board: The Cumberland County Board

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

Code Administrator: The Cumberland County Board

Commissioning: A systematic process that provides documented confirmation that a BESS functions according to the intended design criteria and complies with applicable code requirements.

Decommissioning: To return the property or site back to its pre-installation state or better as approved by a decommissioning plan entered into with the county.

Dedicated-Use Building: A building that is built for the primary purpose of housing battery energy storage equipment, and complies with the following:

1. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
2. No other occupancy types are permitted in the building.
3. Occupants in the rooms and areas containing a BESS are limited to personnel that operate, maintain, service, test, and repair the BESS and other energy systems.
4. Administrative and support personnel are permitted in areas within the buildings that do not contain a BESS, provided the following:
 - a. The areas do not occupy more than 10% of the building area of the story in which they are located.
 - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing a BESS or other energy system equipment.

Distance: The extent or amount of space between points, measured in the unit of feet and on a level plane,

Facility Owner: means (i) a person with a direct ownership interest in a commercial

solar energy system regardless of whether the person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the system, and (ii) at the time the system is being developed, a person who is acting as a developer of the system by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the system, regardless of whether the person will own or operate the system,

Financial Assurance: Reasonable assurance from a credit worthy party satisfactory to the county, and in the form of an irrevocable letter of credit, that any and all damages due to construction, operation, maintenance, and/or commissioning related to the BESS project will be repaired and/or the project will be fully decommissioned.

Fire Code: The fire code of the State of Illinois as currently in effect and as hereafter amended from time to time.

NBC: National Electric Code

NFPA: National Fire Protection Association

Non-Dedicated-Use Building: All buildings that contain a BESS and do not comply with the dedicated-use building requirements.

Non-Participating Residence: A residence that is located on non-participating property and that is existing and occupied on the date that a siting permit to develop a battery energy storage system is filed with the county.

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.

Operator: The person or entity responsible for the day-to-day operation and maintenance of a battery energy storage system and associated equipment, including any third-party subcontractors. All references to Operator in the Ordinance shall include Operator's successors-in-interest and assigns.

Participating Property: Real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a BESS or associated equipment/supporting facilities on the property. Participating property also includes real property that is owned by a facility owner for the purpose of constructing a battery energy storage system.

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 battery energy storage system is filed with the county.

Protected Lands: Real property that is: (i) subject to a permanent conservation right consistent with the Real Property Conservation Rights Act; or (ii) registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.

Siting Approval Permit: A permit approved by the County Board, after a public hearing, allowing the construction and operation of a BESS at a specified location subject to compliance with certain specified special conditions as may be required by the County Board, including, but not limited to, ordinances, regulations, and laws administered and enforced by Cumberland County.

Written Notice: Notice by letter via certified mail, Fed Ex, or personal delivery. The effective date will be the date received by the recipient.

5. SETBACK REQUIREMENTS

Setbacks shall comply with all applicable local, state and federal statutes.

6. OTHER REQUIREMENTS

a. No BESS shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the applicable landowner, township, and county.

b. Upon request from the Cumberland County Code Administrator, the owner or operator of a BESS must submit, within 14 days, a current operation and maintenance report to the Code Administrator.

c. In all undeveloped areas, the BESS developer will be required to complete a consultation with both the Illinois Historic Preservation Agency (IHPA) and the Illinois Department of Natural Resources (IDNR) through the Department's online EcoCat Program. The cost of this consultation shall be at the developer's expense. The final certificate from EcoCat shall be provided to the Cumberland County Code Administrator before a permit will be issued.

d. Lighting of the BESS shall comply with the provisions/guidance provided by the International Dark-Sky Association and shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from all residences and adjacent properties.

e. Battery Energy Storage Systems must be in compliance with all State of Illinois Building, Electric, Plumbing and Energy Codes.

f. All components within the BESS shall comply with the sound limitations established by the Illinois Pollution Control Board under 35 Ill. Adm. Code Parts 900, 901, and 910. Noise levels shall be enforced by the Illinois Pollution Control Board.

g. Height of the BESS and its associated equipment, including containers, racking systems, and dedicated-use buildings, shall be restricted to thirty-five (35) feet in height.

h. BESS and its associated equipment shall be enclosed by a fence at least ten (10) feet in height with a locking gate to prevent unauthorized access unless housed in a dedicated use building.

i. All gates must be clearly labeled with a numbering scheme as approved by the Cumberland County 911 Office and updated annually. 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 Cumberland County 911 Office and updated annually.

j. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the BESS shall be allowed.

k. 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. As required by the NEC (National Electric Code), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. 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.

l. BESS shall have views minimized from all residences using architectural features, earth berms, landscaping, or other screening methods.

m. Weed Control: The facility owner must present an acceptable weed control plan for the entire property, both inside and outside the fenced area. The operating company during the operation of the BESS must maintain the fence and adhere to the weed control plan. The weed control plan must also, at a minimum, comply with the weed and vegetation control standards and policies included in the AIMA (if available).

n. Road Authority: Any roads that will be used for construction purposes and egress or ingress shall be identified and approved by the road jurisdiction. All applicable road and bridge weight limits shall be met during construction and maintenance. All applicable permits shall be acquired from the road jurisdiction prior to start of construction. The applicant shall submit with the siting application a letter of review for driveway access from the road jurisdiction(s).

o. Drainage Systems: The Applicant (BESS Permittee), 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 Project. A drainage plan- sufficient to provide remediation and in accordance with the Agricultural Impact Mitigation Agreement (AIMA), if available, shall be submitted by the Applicant (BESS Permittee) for review and approval by the County.

p. Monitoring test wells around the perimeter of the building will be required at the expense of the applicant.

q. Site Plan Required: A detailed site plan for both existing and proposed conditions must be submitted, showing location of all structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, farm tile, electric equipment, fencing, and screening materials and all other characteristics requested by Cumberland County. The site plan should also show all zoning districts, and overlay districts.

r. Administration and Enforcement: The Code Administrator may enter any property for which a permit has been issued under this Ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met as specified by statute, ordinance and code. Failure to provide access shall be deemed a violation of this Ordinance.

7. BESS SITING PERMIT FEES AND REQUIREMENTS

a. All Battery Energy Storage Systems (BESS) will be required to have a Cumberland County Siting Permit before any work can be started. A written plan and a plat/drawing for the proposed Battery Energy Storage System shall be provided with the Siting Permit Application. The plat/drawing must show the location of the system on the property, with all property lines and setback footages indicated.

Upon submittal of the application for a BESS Siting Approval Permit, a fee of \$25,000.00 plus \$1,000.00 per megawatt will be due. Fees for processing the applications for siting permits shall be submitted to and collected by the Cumberland County Clerk's Office.

b. Upon approval of a Siting Permit by the Board, a fee equating to \$2,000 per MW of proposed nameplate capacity is due upon issuance of the Notice of Construction by the Facility Owner or Developer of the BESS, or upon the commencement of the construction of the BESS. If the total nameplate capacity is less than 1 MW, the Siting Permit fee shall be as follows:

5 kW - 50 kilowatts (kW)	\$150.00
51 kW - 100 kW	\$300.00
101 kW - 600kW	\$500.00
601 kW - 999 kW	\$3,000.00

Any BESS that construction has started before a Siting Permit has been applied and paid for will be charged double the permit fee,

c. Revocation/Suspension

A Siting Permit issued pursuant to this ordinance may be revoked or suspended by the Code Administrator upon a violation of any of the requirements or conditions contained in this ordinance, or upon a failure to comply with any of the requirements or conditions contained in this ordinance, including failure to adhere to the terms of the Road Use Agreement. However, before the Code Administrator may revoke or suspend the Siting Permit, the Code Administrator shall first provide written notice to the Facility Owner, Operator and Applicant setting forth the alleged violations or failure to comply and provide the Facility Owner, Operator and/or Applicant the opportunity to cure such violation or failure to comply within a thirty (30) calendar day period from the date of the notice; provided that, should the Facility Owner, Operator and/or Applicant commence to cure within that 30-day period and diligently pursue to cure the same, then the Facility Owner, Operator and/or Applicant shall receive an additional sixty (60) calendar days to continue to pursue the cure before the Code Administrator may revoke or suspend the Siting Permit,

e. Financial Assurance

1. Reasonable evidence of financial ability of the facility owner and operator to construct, maintain and decommission the BESS is a condition precedent to the commencement of construction, and must be submitted to the Code Administrator at the notice of construction, following issuance of any siting permit under this ordinance.
2. Reasonable evidence of financial ability of any subsequent or successor facility owner/operator, following issuance of any siting permit under this ordinance to original applicant, to construct, maintain and decommission the BESS, must be submitted to the Code Administrator upon becoming subsequent or successor

facility owner/operator of BESS.

3. Cumberland County shall require a performance bond, surety bond, escrow account, irrevocable letter of credit or other financial assurance to Cumberland County from the facility owner and/or operator for each BESS that guarantees the performance of the certification and re-certification requirement set forth in Section 7 (1). The Financial Assurance shall be in accordance with the AIMA requirements (if available).

f. Final Plan Layout to Local Emergency Services

1. Prior to the commencement of construction of the BESS, a construction plan survey depicting an accurate representation of the structures, access roads, and any other additions/improvements, must be submitted to the Code Administrator and the McDonough County local emergency services.

2. An as built survey depicting an accurate representation of the structures, access roads, and any other additions/improvements, must be submitted to the Code Administrator and the McDonough County local emergency services within thirty (30) days of completion of the BESS.

g. Agricultural Impact Mitigation Agreement (if available)

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 Code Administrator as part of the Siting Permit application.

h. Compliance with Illinois Pollution Control Board (IPCB)

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 Siting Permit Application.

i. Compliance with Illinois EPA

It is the responsibility of the facility owner of the BESS to contact the Illinois

Environmental Protection Agency and obtain any and all necessary permits, and to be in compliance with all Illinois Environmental Protection Agency laws and regulations as to noise levels, and any other regulation as applicable.

j. Compliance with Federal and State Permits/Notifications

It is the responsibility of the facility owner of the BESS to contact and secure the required Federal and State permits and notifications. The approved permits and notifications shall be part of the site permit and are required before holding the public meeting.

k. Siting Approval Conditions and Restrictions; Five (5) Years Permit

The County Board may stipulate such conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, and operation of the BESS project as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this Ordinance. Once approved by the County Board, the BESS project shall be completed within five (5) years of the approval date of the permit or the permit approval shall expire. The applicant may petition the County Board for an extension of the five (5) year's period for good cause shown or force majeure reasons or hardship conditions. The County Board, in its sole discretion, may approve or deny such an extension request.

l. Certification and Re-Certification

Battery Storage Energy Systems (BESS) shall conform to applicable industry standards, including those from the UL and Federal Aviation Administration (FAA, if applicable), All applicable County, state and national construction and electric codes shall be followed. Following the granting of siting approval under this Ordinance, a structural engineer shall certify, as part of the BESS siting permit application process, that the foundation and design of the BESS are within accepted professional standards, given local soil and climate conditions. Every 10 years after the completion of the BESS, the facility owner/operator of the BESS shall provide the County with an inspection report issued by a structural engineer that assesses the substantial repair, replacement, repowering and/or structural condition of the BESS and if any component of the BESS is not certified to be within accepted professional standards and compliant with the applicable County, state and national construction and electric codes, then the facility owner/operator shall take immediate steps to fix, repair or replace the component. All technical submissions as defined in the Professional Engineering Practice Act of 1989 (225 ILCS 325/4) and contained in the Siting Approval Permit Application shall be prepared and signed by an Illinois Professional Engineer (or structural engineer) for the relevant discipline. The County may retain a qualified, independent code inspector or professional engineer both to make appropriate inspections of the BESS project during and after construction and to consult with the County to verify

the construction, decommissioning of the BESS Project is performed in compliance with applicable electrical and building codes and this Ordinance. The cost and fees so incurred by the County in retaining said inspector or engineer shall be promptly reimbursed by the facility owner/operator of the BESS project.

8. DECOMMISSIONING REQUIREMENT

- a. As per the Renewable Energy Facilities Agricultural Impact Mitigation Act (505 ILCS 147/ et seq.) each facility owner of a BESS is required to enter an Agricultural Impact Mitigation Agreement (AIMA) with the Illinois Department of Agriculture (if available). The facility owner of the BESS is required to submit to the Code Administrator the approved AIMA (if available) and a Decommissioning Plan and Decommissioning Obligation Cost study in compliance with the AIMA (if available). The decommission obligation costs shall be revisited and revised after the tenth anniversary of the date that commercial operation of the facility has commenced and every five years thereafter. The McDonough County Board may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure the proper decommissioning. The posting of a bond shall be required prior to the issuance of a siting permit for the facility.
- b. A BESS that is out of service for a Continuous 12-month period, or that has not paid the landowner amounts owed for a period of six consecutive months, will be deemed to have been abandoned. The Code Administrator may issue a Notice of Abandonment to the facility owner of a BESS that is deemed to have been abandoned. The Code Administrator shall withdraw the Notice of Abandonment if the Board approves an extension based on hardship conditions. Efforts to operate the system must be shown to have been active and consistent through the time period involved. For purposes of this section, placing the system for sale or intending to use the system at a future date does NOT constitute active and consistent activity.
- c. The facility owner of a BESS shall provide the Code Administrator with a written Notice of Termination of Operations if the operation of a BESS is terminated.
- d. Within 8 months of receipt of Notice of Abandonment or within 12 months of providing Notice of Termination of Operations, the facility owner and operator of a BESS must:
 1. Remove all system components, aboveground improvements, and outdoor storage;
 2. Remove all foundations, pads, and underground electrical wires to a depth of five (5) feet below the surface of the ground; unless said requirement to remove underground electrical wires is waived by land owner of property where underground electrical wires are located; and

3. Remove all hazardous material from the property and dispose of the hazardous material in accordance with federal and state law.

e. All Code Administrator decisions pertaining to this Ordinance may be appealed to the Board. In the event that the State of Illinois enacts a law with regards to the decommissioning of a BBSS, the strictest requirements shall prevail.

9. SITING PERMIT PROCEDURE

a. Siting permit applications shall be submitted to the Code Administrator, The application must be on a form approved by the Code Administrator and must be accompanied by the following:

1. A BESS Project Summary, including to the extent available: a general description of the project, with approximate generating capacity, potential equipment manufacturer(s), type(s) of BESS, number of units, generating capacity of each unit, maximum height of each unit, general location of the project; and description of applicant, facility owner, and operator, including their respective business structures;
2. The name(s), address(es), and phone number(s) of the applicant(s), facility owner and operator, and all properly owner(s), if known;
3. A graphic Site Plan Exhibit including the easement boundaries and legal descriptions for each site;
4. A topographic map of the project site which shall include the project site and the surrounding area which shall encompass an area at least a quarter mile from the proposed project site;
5. Location of all above-ground utility lines within the proposed BESS project site;
6. Location of all underground utility lines associated with the BESS site;
7. An Agricultural Impact Mitigation Agreement (AIMA) between the Applicant and the Illinois Department of Agriculture (if available);
8. A drainage plan sufficient to provide remediation and in accordance with the Agricultural Impact Mitigation Agreement (AIMA), if available, shall be submitted by the Applicant (BESS Permittee) for review and approval by the County;

9. Dimensional representation of the structural components of the BESS construction; and

10. Any and all such other information as may be requested by the Code Administrator, or which is requested per the Application.

b. The Code Administrator will review the application materials for completeness and may request that the applicant provide additional information. When the Code Administrator determines that the application is complete, the Code Administrator will forward it to the Board.

c. The Board will conduct a public meeting for public comments on the application to be held no earlier than 30 calendar days but no later than 21 days prior to the decision of the Board on the siting application. A legal notice of said public meeting shall be published in a newspaper of general circulation no later than 14 days prior to the date of said public meeting. Following the public meeting the Board shall grant a siting permit if it determines that the requirements of this ordinance are met. The Board may include conditions in the permit as provided if those conditions preserve or protect the public health, safety and property values.

d. The Board recommendations, finding of facts and any conditions will be recorded in the minutes.

e. The Board's final decision to approve or reject a siting permit application is an Administrative Decision subject to review solely under the Illinois Administrative Review Law (735 ILCS 5/3 et seq.) and the provisions of the same are hereby expressly adopted.

10. VIOLATIONS

It is unlawful for any person to construct, install, maintain, modify, or operate a BESS that is not in compliance with this ordinance or with any condition contained in a siting permit issued pursuant to this ordinance.

11. ADMINISTRATION AND ENFORCEMENT

a. This ordinance shall be administered by the Code Administrator.

b. The Code Administrator may enter any property for which a siting permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met as specified by statute, Ordinance, code, and/or any other applicable Illinois or Federal Law.

12. PENALTIES

- a. Any violation of this ordinance is a petty offense with a maximum fine of \$500, with each day of violation constituting a separate offense.
- b. Nothing in this section shall be construed to prevent the county from using any other lawful means to enforce this ordinance.

13. COUNTY HIGHWAY AND TOWNSHIP ROAD AGREEMENTS

An applicant, facility owner, or operator proposing to construct, operate or maintain a BESS or related substation shall, prior to construction of the BESS:

- a. Enter into a written road use agreement with the governmental unit having jurisdiction over the identified public roads regarding the use of county/township road, bridges, and rights-of-way;

SEE SEPARATE ORDINANCE CONCERNING ROAD USE AGREEMENT

14. BESS OWNER AND PROPERTY OWNER RESTORATION AGREEMENT

Each BESS lease shall have a signed agreement between BESS owner and property owner regarding restoration requirements as discussed in this ordinance.

15. LIABILITY INSURANCE AND INDEMNIFICATION

Commencing with the issuance of a BESS Siting Permit, the BESS Permittee shall maintain a current general comprehensive liability policy with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. The county and its officers, appointed and elected officials, employees, attorneys, engineers and agents (the "County Affiliates") and all affected Road Districts and their officers, appointed and elected officials, employees, attorneys, engineers and agents (the "Road District Affiliates") shall be included additional insureds on the insurance certificate(s), endorsement(s) and policies for all aspects of the BESS Project for both ongoing and completed operations. The coverage shall contain no special limitations on the scope of protection afforded to the County and the County Affiliates or the affected Road Districts and the Road Districts' Affiliates. The insurance coverage of the Applicant shall be primary as respects the additional insureds. The Applicant shall file the original certificate of insurance with the Code Administrator when filing the site plan.

The Applicant (BESS Permittee) 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 Siting Approval Permit or the construction, operation, maintenance and removal of the BESS and affiliated equipment 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 (BESS Permittee), the Facility Owner or the Operator under this Ordinance or the Siting Approval 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.

16. SEVERABILITY

The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

Approved and adopted by the Cumberland County Board on this 10th day of June, 2025.


Floyd Holkenbrink, County Board Chairman


Beverly Howard, County Clerk