

PUBLIC NOTICE

The following "Battery Energy Storage System (BESS) Criteria and Conditions for a Special Use Application, Allen County, Kansas" was enacted by Resolution #202505 on June 10th, 2025 by the Allen County Board of County Commissioners.

BATTERY ENERGY STORAGE SYSTEM (BESS) CRITERIA AND CONDITIONS FOR A SPECIAL USE APPLICATION.

ALLEN COUNTY, KANSAS

A. Intent.

A Battery Energy Storage System (BESS) shall be permitted only as a Special Use according to the provisions provided below.

These criteria are intended to address major issues associated with any Battery Energy Storage System (BESS); however, they are not all inclusive. Additional issues not listed may emerge and be deemed significant due to studies, public input, etc. during the course of review. These criteria are not intended to regulate the installation of the smaller individual Battery Energy Storage System.

A Battery Energy Storage System is defined as an engineered facility (inclusive of all ancillary facilities required to interconnect and operate the facility) that is capable of charging batteries from an electrical transmission system, storing the electrical energy, and discharging the electrical energy to later reenergize the same system and does not include a power plant or other manner of generating electricity for distribution and storage.

A Battery Energy Storage System shall have, among other equipment, a battery management system, gas, and fire detection devices, and be installed in accordance with NFPA 70 and with NFPA Standard 855 for installation of stationary energy storage systems or the equivalent standard in existence at the time. BESS may also include one or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1, Tier 2, or Tier 3 battery energy storage system as follows:

(1) **Tier 1 battery energy storage systems** have an aggregate energy capacity less than or equal to 80 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. All Tier 1 battery energy storage systems located on residential properties shall comply with all applicable codes (building, fire, property, etc.) as may currently be in effect or hereafter amended in Allen County.

(2) **Tier 2 battery energy storage systems** have an aggregate energy capacity between 81 and 600 kWh or are comprised of more than one energy storage system technology in a room or enclosed area.

(3) **Tier 3 battery energy storage systems** have an aggregate energy capacity greater than 600 kWh and, if in a room or enclosed area, consist of only one energy storage system technology.

BATTERY (IES) — A single cell or a group of cells connected electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of these regulations, batteries utilized in consumer products are excluded from these requirements.

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

COMMISSIONING — A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

DEDICATED-USE BUILDING — A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy, as defined in the International Building Code, and complies with the following:

- (1) The building's only use is battery energy storage and other electrical grid related operations.
- (2) No other occupancy types are

permitted in the building.

(3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.

(4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage systems 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 exterior of the building that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

B. Key Issues.

- Land Use
- Electromagnetic Interference
- Visual Impact
- Reception Interference
- Noise
- Cultural Heritage
- Endangered Species
- Native Vegetation/Weeds
- Cumulative Impact
- Soil Erosion
- Water Quality
- Wildlife Habitat
- Infrastructure
- Public Health and Safety
- Aviation/Lighting
- Decommissioning/Restoration
- Financial Security Agreement

C. Area to be included.

Any BESS Special Use shall encompass the entire perimeter of the proposed BESS and all supporting BESS improvements and infrastructure.

D. Permitting requirements for battery energy storage systems.

(1) Tier 1 battery energy storage systems shall be permitted in all zoning districts, subject to the Zoning Code and the battery energy storage system permit, and exempt from site plan review. Tier 1 battery energy storage systems shall maintain the setback requirements of the zoning district in which they are located.

(2) Tier 2 battery energy storage systems shall be permitted in the following zoning district subject to the Zoning Code and site plan review, which may be waived at the discretion of the Planning and Zoning board:

- (a) I Light Industrial District and I-1 Heavy Industrial.
- (b) Tier 2 battery energy storage systems shall meet the requirements of the principal building within the zoning district in which they are located.

(c) Where a Tier 2 battery energy storage system will be located within 200 feet of a residential use or zone, a special use permit shall also be required.

(3) Tier 3 battery energy storage systems shall be permitted in the following zoning districts subject to the Zoning Code, site plan review, and a special use permit:

- (a) I-1 Heavy Industrial District.
- (b) Tier 3 battery energy storage systems shall meet the requirements of the principal building within the zoning district in which they are located.

(c) Tier 3 battery energy storage systems that are accessory to a permitted principal use and are under 2,000 square feet of total area dedicated to the use do not require a special use permit, unless they are located within 200 feet of a residential use or zone.

E. Noise Standards.

All noise associated with battery energy storage systems or related equipment shall be at 75 dBA or less within 100' of the property as measured from the property line(s). The applicant may be required to provide operating sound pressure level measurements to demonstrate compliance.

F. Special permit standards.

(1) Dimensional criteria. Lot size requirements for the applicable zoning district where the battery energy storage system shall be followed; the minimum setback for all yards is 35'; yard setbacks shall be 250' if adjacent property is zoned or used for residential purposes; required minimum width of access or frontage roads on the property shall be not less than 20' and constructed of dustless paving materials.

(2) Fencing requirements. Unless housed in a dedicated-use building,

Tier 3 battery energy storage systems, including all mechanical equipment, shall be enclosed by a minimum of eight-foot fence with security or anti-scaling components with a self-locking and self-closing gate to prevent unauthorized access.

(3) Screening and visibility. Tier 2 and Tier 3 battery energy storage systems shall be screened from view from adjacent properties that may be in residential zoning districts using architectural features, earth berms, walls, fencing, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area. A minimum of 25 feet of landscaping shall be required along all street frontages for all Tier 3 battery energy storage systems. Engineering review shall be required for all Tier 2 and 3 systems.

G. Site plan application requirements.

For a Tier 2 or 3 battery energy storage system requiring site plan approval, the applicant's submission shall include those items as required in The Allen County Zoning regulations as may be applicable and also identification of the foundation type that will be utilized for the battery energy storage system facilities, a storm-water runoff/detention and drainage plan, a site specific hydrology study, and a statement identifying applicable state or federal environmental permits or any other necessary state or federal permits or regulations and assurance of compliance or copies of said permits if available in addition to the typical site plan requirements.

H. Additional requirements for Tier 2 and 3 battery energy storage systems.

(1) Utility lines and electrical circuitry. All on-site utility lines shall be placed underground in appropriate conduits to the extent feasible and as permitted by the serving utility. An exception may be made for the main service connection at the utility company right-of-way and new inter-connection equipment. All electrical lines and circuitry must comply with existing NEC, NFPA, and fire codes pertaining to battery energy storage systems as may currently be in effect and adopted by Allen County.

(2) Signage.

(a) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of fire suppression system installed in the area of battery energy storage systems, and twenty-four-hour emergency contact information, including a call-back phone number.

(b) As required by the NEC, disconnect and other emergency shutoff information shall 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 and substations.

(3) Lighting. All lighting associated with battery energy storage systems shall be limited to that minimally required for safety, security, and operation of the facility.

(4) Vegetation and tree cutting. Areas within 10 feet on each side of Tier 2 or 3 battery energy storage systems and equipment shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground cover shall be permitted to be exempt, provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible, and is only permitted in association with an approved site plan or other applicable permits.

(5) One-line electric diagram. A one-line electric diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all NEC-compliant disconnects and over-current devices, shall be required.

(6) All equipment or materials shall be Nationally Recognized Testing Laboratory (NRTL) approved as may be appropriate. The use of any non-NRTL equipment in the battery energy storage system must be pre-approved by Allen County.

I. Contents of BESS Development Plan.

1. General Introduction.

The Development Plan shall be written in a style that is easily understood by the general reader. Technical terminology shall be avoided as much as possible. Detailed technical data, statistics, and supplementary information required to support the main

text is to be included as appendices. All sources of information are to be referenced, and must be current. Information presented in the form of maps, diagrams or plans is preferred as it is generally easier to understand. The Applicant shall pay to the county a fee of \$200.00 upon filing the Special Use Permit.

Close consultation with the Allen County Zoning Administrator during preparation of the Development Plan is highly recommended. The Allen County Zoning Administrator may be contacted at the Allen County Courthouse, 1 N. Washington, Iola, KS. More than one draft may be required before it is considered suitable for presentation to the Planning Board.

If approved, the Special Use shall encompass all property within the perimeter of the proposed BESS.

a. Applicant must provide proof of lease agreements with landowners within the project area.

b. Applicant must provide the names and addresses of all landowners within the BESS project area and all landowners within 1000 ft. of the exterior perimeter of the BESS area. Notice of hearing on the Development Plan shall be sent by the Zoning Administrator to all such landowners by first class mail and shall be published once each week for two consecutive weeks in the official county newspaper. At least 20 days shall elapse between the date of the last publication and the date set for hearing.

c. Nothing in the approval of the Special Use shall impose any liability or duty whatsoever on Allen County or any of its agencies, including, but not limited to any liability for taxes, wages or any other employee benefits for any person or entity. Contractors, suppliers, or consultants accepting and relying on documents, materials and other information from the Applicant or Special Use Holder will do so on their own responsibility and at their risk.

2. Topographical Map.

A topographical map with contours at intervals of 20 feet at a 1:2000 Scale showing the locations of the following features: (U.S.G.S. Scale)

a. Lot lines for each parcel under separate ownership included in the proposed BESS area and within one mile of its boundaries together with a key identifying the owner of each parcel by owner name and CAMA parcel number.

b. All Residential buildings within the boundaries of the proposed BESS and within one mile of the exterior perimeter of the BESS area.

c. All public roads within the BESS area and within one mile of the exterior perimeter of the BESS area. The access points to the public roads to be used for both the construction and the operation phases of the project shall be designated.

d. Utility lines and pipelines within the BESS area must be provided prior to construction.

e. Proposed setbacks of all other structures from the BESS boundary lines.

f. Boundaries of any 100-year floodplain as identified on the National Flood Insurance Program maps for Allen County.

g. Location of all transformers, substations, connecting power lines and other structures to be used as part of the operation of the project (including the dimensions of such structures). Any changes in location of structures must comply with the setback rules set out herein. Applicant will notify county in writing of any plan or location changes prior to commencement of construction.

3. Commercial Operation.

Lacking the BESS being Commercially Operational, the approved Special Use permit shall be limited to a period not to exceed two (2) years from the date that the Special Use is approved by resolution of the Board of County Commissioners to the BESS's Commercial Operation Date (COD), being the date when the power purchase utility or other entity first receives purchased power produced from the operator of the generator or turbine units located in the BESS project plan. The Board of County Commissioners must approve any time extension of the approved Special Use.

4. Cultural Assessment.

Applicant shall preform a cultural resources assessment and provide the same to County and to the State Historic Preservation Office.

5. Wildlife and Wetlands.

Applicant shall comply with all

requirements provided by law and obtain all permits required by the U. S. Fish and Wildlife Service (USF&WS), the Kansas Department of Wildlife, Parks, and Tourism (KDWP&T), the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) regarding the protection of wildlife and wetlands.

6. General Construction Document Requirements.

Applicant shall provide a general description of major components of the BESS and on-site facilities including specifications, transmission lines and accessory facilities such as control rooms, transformers, substations, maintenance facilities, underground infrastructure, and interior access roads.

7. Soil Erosion Sediment Control and Storm Water Runoff.

Applicant shall prepare and provide to County a KDHE approved Storm Water Pollution Prevention Plan for all construction sites.

8. Fire Safety and Emergency Plan.

a. The Development plan shall include a Fire Safety and Emergency Plan identifying the potential fire risk associated with the project including both prescribed burning and non-prescribed burning. This shall address fire originating within the site, fires escaping from the site and potential effects of fire originating from outside the site.

b. The Fire Safety and Emergency Plan shall address all provisions for fire suppression, fire and emergency medical response to be provided by the applicant both during construction and during operation of the project. The plan shall identify what equipment is not presently owned by the public fire department or other first responder which may be needed to respond to emergencies at the project. Any equipment so identified shall be purchased by applicant.

9. Ground Water Resources.

Applicant must notify County of any risks it finds to ground water aquifers in connection with the construction of a BESS project and all mitigation measures the applicant proposes to utilize to mitigate such risk.

10. Air Quality.

Applicant shall submit a plan to control dust on roads which will be used during construction which plan shall be a part of the Road Agreement required below.

11. Land Use and Development.

Applicant shall identify potential constraints or benefits the BESS may place on the current or future use of the land within the project site and the surrounding area. The extent of any limitations due to public health and safety risks shall be specifically addressed, and the effects on the following activities shall also be addressed:

- a. Existing or proposed tourist or recreational activities including hunting and fishing
- b. Agricultural activities
- c. Residential activities
- d. Commercial activities
- e. Industrial activities

12. Bibliography.

The Development Plan shall provide a bibliography of the authorities consulted and documents relied on in completing the Development plan.

13. Appendices.

All Detailed technical information that supports the Development Plan shall be included in the appendices. The most important feature of the appendices shall be included in the main body of the Development Plan.

J. Prerequisites to Construction Under an Approved Special Use.

1. Decommissioning Agreement.

A Decommissioning Agreement as described in Section L below must be approved and accepted by the Board of County Commissioners before any construction begins.

2. Road Agreement.

Transportation routes used for construction shall be coordinated with the Allen County Public Works Director. Allen County may require Applicant to provide and pay for an independent study of all or some of the roads, bridges, and culverts over which equipment for the BESS will travel during the construction phase to determine the ability of said roads, bridges, and culverts to withstand the expected traffic. Applicant shall be

held liable for any damages to County roads or rights of way resulting from construction, deconstruction and / or maintenance activities. A Road Agreement by which the developer or operator of the BESS assumes financial responsibility for infrastructure improvements needed for construction and repair for infrastructure damages caused by construction must be entered into by the Applicant and by the Board of County Commissioners before any construction begins.

K. Construction Requirements.

1. Licensed Engineer.

A licensed professional structural engineer or certified structural engineering firm selected by the Applicant shall conduct all inspections on each BESS with respect to the foundation, structural assembly, mechanical and electrical aspects of the BESS construction. Documentation regarding each approved inspection shall be submitted to the Zoning Administrator.

All expenses of such engineer or engineering firm shall be the responsibility of the Applicant or holder of the Special Use. Allen County, its officers, agents, and employees shall be held harmless from all claims, costs, liabilities, damages or expenses including costs of suits and fees and expenses for legal services on account of any damage claimed by any third party, including such claims by agents or employees of said third party arising from any approval or non-approval of any inspection.

2. Site Clearance.

Site clearance and preparation shall be conducted in accordance with law and applicable landowner agreements.

3. Field Representative.

Prior to the start of and continuously throughout the construction and site restoration, Applicant shall designate a field representative responsible for overseeing compliance with the conditions of the Special Use. Such representative shall be accessible by telephone during normal business hours. The address, phone number and emergency phone number of such representative shall be provided to the Zoning Administrator and 911 Emergency Services. Applicant shall notify the Zoning Administrator and 911 Emergency Services of any change in contact information.

4. Cleanup.

Applicant shall remove all waste and scrap that is the product of construction, operation, restoration, and maintenance from the site and properly dispose of it upon the completion of each task. Any land restoration shall be done in a manner that is consistent with the terms of the lease agreement executed between the Applicant and the landowner.

L. Decommissioning/Restoration/Abandonment/Financial Security.

1. Decommissioning Agreement.

Applicant shall enter into a Decommissioning Agreement with the Board of County Commissioners before any construction begins. Compliance with the Plan shall, at all times, be a condition of the Special Use whether or not explicitly listed in any document reflecting the agreement. The Plan shall describe the manner in which the BESS improvements will be dismantled and removed from the site within 18 months of the abandonment or the end of the useful life of the BESS or of such improvement and shall require the removal of all above-ground components of the BESS. Foundations shall be removed to a depth of at least 4 feet below grade and the area refilled with soil which is reasonably similar in quality, structure, and fertility to that of the original excavation and up to the landowner's satisfaction. Access roads shall be removed in accord with the terms of the property owners' lease agreements.

2. Abandonment.

The BESS shall be deemed abandoned at the end of a one-year period following the mailing by certified mail of written notice of abandonment to the BESS owner of record sent when a BESS does not store or provide electrical energy for distribution and there is no demonstrated plan to restore the equipment to operating condition. The Board of County Commissioners may require the current Special Use holder to decommission any abandoned BESS or may undertake such decommissioning with the proceeds of the escrow account, surety bond or insurance policy or otherwise at the