ORDINANCE NO. 2025-0421B
AN ORDINANCE REGULATING SITING OF BATTERY ENERGY STORAGE SYSTEMS IN WARREN COUNTY, INDIANA

WHEREAS, Warren County, Indiana recognizes the increasing use of Battery Energy Storage Systems and finds a growing need to properly site battery energy storage systems within the jurisdiction of the County to protect residential, business and agricultural areas, to preserve the overall beauty, nature and character of the County, to promote the effective and efficient use of battery energy resources, and to protect the health, safety, and general welfare of the citizens of the County;

WHEREAS, the Warren County Commissioners previously adopted the Zoning Ordinance pertaining to county zoning and land use controls (the "Ordinance"); and

WHEREAS, the County may lawfully regulate and restrict the use of land for trade, industry, residence or other purposes in accordance with a comprehensive plan and in designs to further the health, safety, convenience and welfare of its citizens as set forth in Indiana Code §36-7-4-201; and

WHEREAS, pursuant to Indiana Code § 36-1-3, et. seq. a government unit has all powers necessary and desirable in the conduct of its affairs, though not granted by statute, for the effective operation of government as to its local affairs; and

WHEREAS, the County intends to establish a process for permitting and approving the use of land in the County for Battery Energy Storage Systems that is not inconsistent with federal and state law;

WHEREAS, the adoption of an ordinance regulating Battery Energy Storage Systems is necessary and appropriate to achieve and secure the benefits of these projects and to avoid and/or minimize the risks, dangers, and inconvenience to health, safety and general welfare of the citizens of the County;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Warren County that the following standards are required for the approval and permitting of a Battery Energy Storage System project in Warren County, Indiana.

I. DEFINITIONS

A. "ANSI" means American National Standards Institute.

B. "Applicant" means the entity or person who submits to the County an application for the siting of any Battery Energy Storage System (BESS).

C. "Battery(ies)" means a single cell or group of cells connected electrically in a series, in a parallel, or in 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) means one or more electrochemical devices that charge, or collect, energy from the grid or a generation facility, store that energy, and then discharge that energy at a later time to provide electricity or other grid services.

E. "Cell" means the basic electrochemical unit, characterized by an anode and cathode, used to receive, store and deliver electrical energy.

F. "Dedicated-Use Building" means a building that is built for the primary intention of housing battery energy storage equipment.

G. "Energy Storage" means any technology that is capable of absorbing electricity, storing the electricity for a period of time, and redelivering the electricity.

H. "Fire Code" means the fire code of the State of Indiana as currently in effect and as hereafter amended from time to time.

I. "NEC" means National Electic Code.

J. "NFPA" means the National Fire Protection Association.

K. "Non-Dedicated-Use Building" means all buildings that contain a BESS and do not comply with the Dedicated-Use Building requirements.

L. "Non-Participating Property" means real property that is not a participating property in an energy generation project or BESS.

M. "Non-Participating Residence" means 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 BESS is filed with the County.

N. "Occupied Community Building" means 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 BESS is filed with the County: a school, place of worship, day care facility, public library or community center.

O. "Operator" means the entity responsible for the day-to-day operation and maintenance of the BESS, including any third-party subcontractors.

P. "Owner" means the entity or entities with an equity interest in the BESS, including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the BESS (unless the property owner has an equity interest in the BESS); or (ii) any person holding a security interest in the BESS solely to secure an

extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the BESS within one year of such event.

Q. "Participating Property" means real property that is the subject of a written agreement a BESS Owner and the owner of the real property that provides the BESS owner with an easement, option, lease, license or any interest 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 BESS.

R. "Warren County Zoning Ordinance" or "Zoning Ordinance" means the Warren County Zoning Ordinance, as amended.

II. APPLICABILITY

This Ordinance governs the siting of BESS permitted, installed or modified with a rated nameplate capacity of equal to or greater than 1,000 kilowatts (1 megawatt). After the effective date of this Ordinance, BESS may be sited and operated in all Warren County townships.

III. PROHIBITION

No entity shall construct, install, locate or operate a Battery Energy Storage System (BESS) without having fully complied with the provisions of this Ordinance.

IV. APPLICATION REQUIREMENTS

Prior to the construction of a BESS, the Applicant shall obtain approval for the following: (1) a Conditional Use Permit, also known as a Special Exception Permit, from the Warren County Board of Zoning Appeals ("BZA") to permit a BESS in any zone other than R-1, R-2, R-3 or R-4 (Residential) zoned land, as described below and in § 101 of the Warren County Zoning Code (the "Code"), (2) a Request for Variance for any variances anticipated on the BESS Project, as described below and in § 134.02 of the Code, and (3) an Improvement Location Permit from the Warren County Building Commissioner, as described below and in § 161 of the Code. A BESS may not be located in an R-1, R-2, R-3 or R-4 (Residential) zoning district.

A. The Application for a Conditional Use Permit

1. The application shall be filed with the Building Commissioner's Office for the BZA and include the following items:

a. A BESS Project summary, including, to the extent available: (1) a general description of the project, including its approximate name plate storage capacity; the potential equipment manufacturer(s), type(s) of BESS(s), number of BESS(s), the general location of the project; and (2) a description of the Applicant, Owner, and Operator, including their respective business structures;

b. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s) with BESS on their properties, if known;

c. Written consent from the proposed property owners where BESS may be located;

d. Waivers from the setback requirements executed by the Occupied Community Building owners and/or the Non-Participating Property owners;

e. A site plan at an appropriate scale showing the planned location of the BESS and all related components, Substations, electrical cabling, ancillary equipment, operations and maintenance buildings, third party transmission lines, Participating and Non-Participating Residences, Occupied Community Buildings, parcel boundary lines (including identification of adjoining properties), setbacks lines, public access roads and turnout locations, recognized historic or heritage sites as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines, and the location of any construction staging area including concrete batch plants;

f. Location of all existing underground utility lines associated with the BESS site;

g. Assurance that no portion of the BESS will contain or be used to display advertisements;

h. Certification that layout, design and installation conform to and comply with all applicable industry standards;

i. A Drainage Plan approved by the Drainage Board;

j. Assurance that the site has sufficient water access;

k. A Transportation Plan approved by the Warren County Commissioners and the Warren County Highway Superintendent;

l. An Emergency Response Plan approved by the Warren County Commissioners;

m. An Economic Development Agreement approved by the Warren County Commissioners; and

n. A proposed Decommissioning Plan for the BESS.

2. In determining whether to approve the Application for Conditional Use, the BZA shall determine whether the Application satisfies each of the criteria set forth in § 102 of the Code, and make written findings thereof.

3. The Conditional Use Permit granted by the BZA for a BESS Project shall be valid for a period of one (1) year, after which the Conditional Use shall terminate and be of no further force or effect if construction in earnest of the approved BESS has not commenced. The Applicant shall be granted a one (1) year extension to two (2) years from the date of the BZA approval if the Applicant presents its request for an extension to the BZA and provides a report to the BZA which shows the progress made on the BESS Project. Thereafter, an additional extension shall be at the BZA's discretion.

B. The Application for Variance

1. Contemporaneously with the Application for a Conditional Use, the Applicant shall submit an Application for Variance for any variances sought as part of the

BESS Project. A single Application for Variance may be submitted for all variances sought.

2. In determining whether to approve the Application for Variance, the BZA shall determine whether the Application satisfies each of the five (5) criteria set forth in § 134.024 of the Code, and make written findings thereof.

3. The fee for any variances is included in the Application fee.

C. The Application for Improvement Location Permit

1. The Applicant shall apply to the Zoning Administrator for an Improvement Location Permit, as described in § 161.01 of the Code. In addition to the information required on the Improvement Location Permit Application, the Applicant shall provide the following information to the Zoning Administrator prior to the issuance of an Improvement Location Permit:

a. Location of all underground utility lines associated with the BESS site.

b. Dimensional representation of the structural components of the BESS site.

c. Schematic of electrical systems associated with the BESS including all existing and proposed electrical connections.

d. Manufacturer's specifications and installation and operation instructions or specific BESS design information.

e. Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the Warren County Building Commissioner.

f. A revegetation plan for restoring areas temporarily disturbed during construction.

g. Any other item reasonably requested by the BZA.

V. DESIGN AND INSTALLATION

A. Design Safety Certification

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 from the County.

B. Height

The height of any BESS battery, cell, racking system, container or Dedicated Use Building is limited to fifteen (15) feet above ground level.

C. 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 of the BESS shall be limited to that minimally required for safety and operational purposes and shall be shielded and downcast so as to minimize light pollution on adjacent parcels.
3. Areas within twenty (20) feet on each side of a BESS shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery or other similar types of vegetation shall be exempted, provided that they DO NOT form a means of readily transmitting fire.

D. Security

1. Fencing
   a. All BESS's must provide security fencing around the BESS Compound. A BESS that is enclosed within the project area of a Commercial Solar Energy Conversion System (CSECS) shall not require additional fencing.

   b. Said fencing must provide limited and secured access to prevent entry by unauthorized personnel.

   c. Fencing and access gates shall be eight (8) feet tall as measured from the average grade below the fence to the tallest point of the fence.

   d. Razor wire is prohibited on all fences.

2. Signage
   a. "No Trespassing" signs shall be attached to any perimeter fence.

   b. "Danger" and "High Voltage" signs shall be posted at the height of five (5) feet on or near the entrance to the site, pad-mounted transformers, substations, and Dedicated-Use Buildings.

   c. At the locked entrance to the facility, a sign showing the names and phone numbers of the electric utility provider, the site operator and an emergency contact, as well as the facility's 911 address and GPS coordinates shall be provided. Additionally, a sign should be posted containing the name and phone number of a person for the

public to contact with the inquiries and complaints throughout the life of the project.

E. Noise

Noise generated from the BESS, components and associated ancillary equipment shall not exceed limits allowed under state law.

F. Electrical Components

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

G. Compliance with Additional Regulations

Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations.

VI. SETBACKS

A. BESS shall meet the minimum zoning setbacks for the zoning district in which located.

B. Occupied Community Buildings and Dwellings on Non-Participating Properties must be set back a minimum of five hundred (500) feet from the nearest edge of any component of the BESS, to the property line.

C. Non-Participating Properties must be set back five hundred (500) feet from the nearest edge of any component of the BESS, to the nearest point on the property line of the Non-Participating Property.

D. Public Road Rights-of-Way (ROW) must be set back 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.

E. These setbacks may be waived in writing by property owners adjacent to the BESS.

VII. OPERATION

A. Maintenance / Inspection

1. The Owner or Operator of the BESS must submit, on an annual basis, a summary of the operation and maintenance reports to the County. In addition to the above annual summary, the Owner or Operator must

furnish such operation and maintenance reports as the County reasonably requests.

2. Any physical modification to the BESS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the owner or operator shall confer with the Building Commissioner to determine whether the physical modification requires re-certification.

3. The Warren County Building Commissioner staff, along with licensed third party professionals retained by the County for the specific purpose of conducting inspections of the BESS shall have the right, at any reasonable time and with sufficient prior notice, to accompany the owner or operator, or his agent, on the premises where a BESS has been constructed, to inspect all parts of said BESS installation and to require that repairs or alterations be made. The owner or operator of a BESS may retain a licensed 3rd party professional engineer, at their expense, familiar with BESS systems to prepare and submit to the Warren County Building Commissioner staff a written report which addresses the repairs or alterations requested, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary, within thirty (30) days after receiving notice from the Warren County Building Commissioner staff that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The Warren County Building Commissioner staff will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested in the written report. In the event of a dispute between the Warren County Building Commissioner staff and the owner or operator, or a 3rd party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the Building Commissioner shall be final.

4. The owner or operator of any BESS shall maintain a current general liability policy covering pollution, bodily injury and property damage and naming Warren County as an additional insured with dollar amount limits per occurrence in the aggregate, and a deductible which is suitable to the County Commissioners. Proof of such insurance shall be provided annually to the Warren County Surveyor and Auditor.

B. Road Use

1. Any necessary, temporary closures and proposed detours shall be made known to the Highway Department and the County Emergency

Management Agency at least twenty-four (24) hours prior to the temporary closure or as otherwise agreed.

2. The Road Use Agreement shall:
   a. Provide for a pre-construction and/or pre-maintenance baseline survey to determine existing road conditions and right of way conditions and assess for potential future damage;
   b. Identify necessary heavy and oversized equipment and materials that may use the roads which may in certain cases be in excess of the design limits of the roads;
   c. Identify any modifications or improvements needed to permit such equipment and materials to use such roads;
   d. Outline exact routes intended for construction or maintenance use;
   e. Detail the maintenance responsibility and method of reimbursement;
   f. Outline expectations of the County when road reconstruction is needed;
   g. Outline the time schedule including any and all provisions during seasonal road postings;
   h. Provide for financial assurance in the form of sufficient cash escrow to be held by the County Treasurer's Office for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the BESS and its included equipment; and
   i. Identify any special issues which may affect the public health, safety and welfare.

3. The BESS operator or owner shall sign an affidavit indicating they will compensate Warren County for any and all damage to public roads caused by BESS construction vehicles or traffic.

C. Agricultural Damage Repair

All damage to waterways, drainage ditches, field tiles or any other infrastructures caused by the construction, maintenance or decommissioning of the BESS must be completely repaired by the Owner or Site Operator to an acceptable state within a reasonable amount of time determined by the property owner.

D. 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 or waste 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.

E. Coordination with Emergency Responders

1. The Owner shall submit to the local emergency responders a copy of the site plan, Standard Operating Procedures (SOPs) and Standard Operating Guidelines (SOGs), for the BESS so that 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 Owner.

2. The Owner, 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. In the event any specialized equipment or materials are used or expired, Owner shall replace such equipment and materials at its expense. Such equipment and materials shall be donated to local emergency response agencies at no cost to the County or other local government agencies.

3. In the event of a response for prevention, cleanup, containment or abatement of an actual 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 organization and/or emergency management personnel involved in the response thereto for the prevention, mitigation, containment, cleanup or abatement of the actual or potential discharge of hazardous materials, cost of equipment operation, damage and loss, cost of materials obtained directly by the response organization and the cost of any contract labor and material incurred by any governmental body or emergency response agency.

4. The Owner 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 Owner and the Operator and at two (2) designated BESS representatives (a primary and an alternate who are always on call). 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 shall be reviewed and updated on an annual basis.

5. Nothing in this section shall alleviate the need to comply with all other applicable safety, fire and emergency laws and regulations.

VIII. DECOMMISSIONING PLAN

Prior to receiving siting approval under this Ordinance, the County and the Applicant, Owner, and/or Operator must formulate a Decommissioning Plan to ensure that the BESS Project is properly decommissioned. The Decommissioning Plan shall include:

A. Decommissioning of the BESS site must occur in the event it is not in use for twelve (12) consecutive months.

B. Assurance that the facilities are properly decommissioned upon the end of the project life or facility abandonment. Applicant's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements. Prior to issuance of a building permit, the Applicant shall provide a contractor cost estimate for demolition and removal of the BESS facility and will provide financial assurance in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond, letter of credit or other security acceptable to the County, for the cost of decommissioning each BESS to be constructed under that building permit, which security shall be released when such BESS is properly decommissioned as determined by the Warren County Building Commissioner.

1. In the event of abandonment by the owner or operator, the Applicant will provide an affidavit to the Warren County Building Commissioner representing that all easements shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that facilities are properly decommissioned within twelve (12) months of expiration or earlier termination of the project.

2. Every five years after the start of construction, updated proof of acceptable financial assurance must be submitted to the Warren County Commissioners for review.

3. If the owner fails to dismantle and/or remove the BESS within the established timeframes, the County may complete the decommissioning at the owners' expense.

C. The Applicant's, Owner's, or Operator's failure to materially comply with any of the above provisions shall constitute a default under this Ordinance.

D. Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the Owner and Operator, setting forth the alleged default(s). Such written notice shall provide the Owner and Operator a reasonable time period, not to exceed 60 days, for good faith negotiations to resolve the alleged default(s).

E. If the County determines in its discretion, that the parties cannot resolve the alleged default(s) within the good faith negotiation period, the existing County ordinance provisions addressing the resolution of such default(s) shall govern.

IX. TRANSFER

The Applicant shall provide written notification to the Zoning Director at least thirty (30) days prior to any change in ownership of a BESS. The phrase "change in ownership of Battery Energy Storage System" 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, 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.

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, 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 BESS.

X. PENALTY

Any person, persona, firms, partnerships or corporations, whether acting alone or in concert with any other, who violates this Ordinance shall be subject to a fine of $2,500.00 per day, each day the violation occurs, until such violation is corrected.

XI. SEVERABILITY

Should any section or provision of this Ordinance be declared to be invalid or unconstitutional, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or unconstitutional.

XII. EFFECTIVE DATE

This Ordinance shall be in effect after its final passage, approval and publication as required by law.

Requirements of this ordinance may be waived by the Warren County Board of Zoning Appeals upon application and after public hearings.

SO ORDANED, this 21st day of April, 2025.

BOARD OF COMMISSIONERS OF
WARREN COUNTY, INDIANA

John Comer

John Comer, President

Craig Greenwood

Clay Andrews

ATTEST:

Robin Weston-Hubner

Robin Weston-Hubner, Warren County Auditor