

**Third Draft Version**  
**Incorporating May 4<sup>th</sup> Town Board Comments.**

LOCAL LAW NUMBER \_\_\_\_\_ OF THE YEAR 2026

A LOCAL LAW OF THE TOWN OF CLAY, also known as “The Town of Clay Battery Energy Storage System Law,” in relation to the regulation of battery energy storage systems in the Town of Clay.

This Local Law shall take effect immediately upon filing with the New York State Secretary of State pursuant to §27 of the Municipal Home Rule Chapter.

BE IT ENACTED by the Town Board of the Town of Clay, Onondaga County, New York, as follows: That Town of Clay Local Law Number \_\_\_\_ of the year 2026 entitled “The Town of Clay Battery Energy Storage System Law” is hereby enacted. Said Local Law amends the Town Code as follows:

By creating a new Chapter, 209, entitled “Battery Energy Storage Systems.” By adding the following sections and subsections to Chapter 209:

**§209-1 Authority.**

This Chapter regulates Battery Energy Storage Systems (BESS) to protect public health, safety, and welfare.

- A. New York State Constitution Article IX §2(c)(6) and §2(c)(10);
- B. Statute of Local Governments §10(1), §10(6), and §10(7);
- C. Municipal Home Rule Chapter §10(1)(i), §10(1)(ii), §10(1)(ii)(a)(6), §10(1)(ii)(a)(11), §10(1)(ii)(a)(12), and §10(1)(ii)(a)(14);
- D. Town Chapter Article 16;
- E. Town Chapter §130(1), §130(3), §130(5), §130(7), §130(7-a), §130(11), §130(15), §130(15-a), §130(16), §130(19), and §130(25);
- F. Town Chapter §64(17-a) and §64(23);
- G. The Town of Clay’s inherent police powers; and
- H. The Chapters of the State of New York.

**§209-2 Statement of Purpose and Findings.**

The Town Board of the Town of Clay recognizes that battery energy storage is a clean, readily available, and renewable energy source. However, the Town Board finds a need to properly site battery energy systems within the boundaries of the Town to protect residential, business areas, and other land uses, to preserve the overall beauty, nature, and character of the Town, 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 Town.

This Battery Energy Storage System Chapter is adopted to advance and protect the public health, safety, and welfare of Town by creating regulations for the installation and use of battery energy storage systems and equipment, with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
- B. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
- C. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources;
- D. To ensure appropriate siting of battery energy storage systems in accordance with Town policy and the Town's land use goals;
- E. To respond to the recommendation from the Onondaga County Board to compose and adopt an ordinance to manage the review and permitting of battery energy storage systems; and
- F. To create synergy between battery energy storage system development and:
  - (1) Promote and manage new development in the Town to protect resources and the Town's unique identity, create new places, and balance the cost of providing public services;
  - (2) Ensure that growth occurs in a manner that preserves the quality of life and character of the community;
  - (3) Preserve and enhance the character of existing neighborhoods and hamlets;
  - (4) Preserve and protect natural resources and farmland, and support the agricultural economy; and
  - (5) Ensure the availability of public facilities, infrastructure, and services that adequately serve the present and future needs of Clay.

The Town Board of the Town of Clay makes the following findings, which are cumulative and interrelated and shall be liberally construed: Throughout New York State, shortsighted and haphazard planning has frequently resulted in the creation or exacerbation of problem industries which adversely impact public health and quality of life, cause proliferation of pollution, compromise aesthetics, and degrade community character;

- A. Battery energy storage systems have increased significantly in number throughout the State and country

and without careful planning, they can be sited without sufficient regard for their impact on the health, welfare, and safety of residents;

- B. The Town of Clay is a suburban community with a diverse landscape consisting of extensive river frontage, significant amount of wetlands, and sensitive soils;
- C. The Town of Clay has a significant agricultural community supporting various agricultural uses;
- D. If not properly regulated, installation of battery energy storage systems can create drainage problems through erosion and lack of sediment control for facility and access roads and can harm farmland and wetlands through improper construction methods;
- E. Battery energy storage systems, when improperly sited, are known to adversely affect property values and cause economic hardship to property owners;
- F. Battery energy storage systems may be significant sources of noise, including infrasound, that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and the health and quality of life of residents;
- G. Construction of battery energy storage systems can create traffic problems and can cause damage to local roads and infrastructure due to the weight of the units;
- H. Battery energy storage systems have the potential to cause electromagnetic interference with various types of communications;
- I. Battery energy storage systems need to be regulated for removal when no longer utilized. It is incumbent upon the Town of Clay to ensure that funding for removal is secured as part of the permitting process;
  - (1) As of the date of enactment of this Law, the overwhelming majority of utility- or grid-scale battery energy storage systems in the United States, which are classified as “Tier 3” herein, utilize lithium-ion cells. While lithium-ion battery technology offers numerous advantages in terms of longevity, energy density, and weight, it has numerous drawbacks as well, many of which are of concern to the Town Board, including but not limited to the following: Lithium-ion batteries utilize flammable electrolytes rather than the aqueous (water-based) electrolytes found in older battery technologies such as lead-acid and nickel-metal hydride;
  - (2) Lithium-ion batteries are particularly vulnerable to a condition known as “thermal runaway” whereby heat is generated at a higher rate than it can be dissipated. If a cell-specific critical temperature is reached, the internal cell structure can break down and the flammable electrolyte generates a flammable gas. If the internal pressure within the cell exceeds the mechanical strength of the battery housing, the housing may rupture. Alternatively, if the pressure exceeds a pre-set limit, a safety valve may open. In either case, a situation known as an “off-gas” event has occurred, and if an ignition source is present, the gaseous electrolyte may ignite;

- (3) Ignition of gaseous electrolyte or the heat generated by the thermal runaway itself can heat adjacent cells above their critical temperatures, resulting in a cascading thermal runaway. Thus, a failure in a single cell failure may propagate and cause a catastrophic event involving the entire system;
  - (4) Off-gas events can release substantial amounts of electrolyte and combustion gases. Off-gases from lithium-ion batteries are extremely toxic and can contain mixtures of carbon monoxide, hydrogen, ethylene, methane, ethane, benzene, hydrogen fluoride, hydrogen chloride, and hydrogen cyanide, depending on the battery type. Hydrogen fluoride forms hydrofluoric acid upon contact with water, including water vapor in the air and moisture in the lungs and on the eyes. Hydrofluoric acid is highly corrosive and can cause chemical burns and blindness and, in addition, is a powerful contact poison that is readily absorbed through the skin, eyes, and lungs and can cause cardiac arrest. Hydrogen chloride forms hydrochloric acid upon contact with water, including water vapor in the air and moisture in the lungs and on the eyes. Hydrochloric acid is corrosive and can cause chemical burns on the skin, respiratory tract, and eyes, and in severe cases can cause permanent eye damage and death; and
  - (5) If off-gas accumulates within a space, there is a high risk of instantaneous ignition. The pressure from the resulting deflagration can rupture the structure;
- J. In the event of a thermal runaway, other battery failure, or a conventional fire that spreads to the batteries, the foregoing constitute a serious danger to first responders, passers-by, and persons on nearby properties. They also constitute a serious environmental hazard;
- K. Due to the foregoing risks, this Chapter contains regulations requiring passive and active fire protection, explosion prevention, and other measures to mitigate the serious risks inherent to battery energy storage systems. However, no policy, procedure, or measure can provide complete safety or an absolute guarantee against a catastrophic event. Accordingly, strict rules and regulations regarding the construction, operation, and placement of battery energy storage systems are appropriate; and when considering the construction and maintenance of large-scale systems, appropriate weight and consideration should be given to numerous factors, including but not limited to the following:
- (1) The proximity of the proposed system to residential areas, schools, environmental resources including but not limited to wetlands, rivers, lakes, streams, and creeks;
  - (2) The relative distress and disruption caused to the community;
  - (3) The actual necessity for such facility given energy production in the area and region, including but not limited to clean energy production;
  - (4) Past and present stresses and disruption imposed upon an area due to all types of energy production;
  - (5) Alternatives to the proposed facility, including location in other areas, location in areas where demand is greater; and

- (6) The need to balance the burden upon the community with the potential benefits that the community may enjoy if the facility is approved.

**§209-3 Definitions.**

**ANSI:** American National Standards Institute.

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

**BATTERY ENERGY STORAGE MANAGEMENT SYSTEM:** An electronic supervisory system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected. One of the main functions of the BMS is to keep the cells operating within their designed operating parameters to prevent thermal runaway.

**BATTERY ENERGY STORAGE SYSTEM:** A collection of cells, assembled together, housed in a self-contained unit, or in a building that is constructed to meet specific standards related to industry and local fire codes, that is capable of storing energy in order to supply electrical energy to a building, a group of buildings, and/or the electrical grid at a future time. A battery energy storage system is classified as a Tier 1, Tier 2, or Tier 3 battery energy storage system as follows:

- A. Tier 1 battery energy storage systems include either:
- (1) Battery energy storage systems for one- to two-family residential dwellings within or outside the structure with an aggregate energy capacity that shall not exceed:
    - a. Forty kWh within utility closets and storage or utility spaces;
    - b. Eighty kWh in attached or detached garages and detached accessory structures;
    - c. Eighty kWh on exterior walls; or outdoors on the ground.
  - (2) Other battery energy storage systems with an aggregate energy capacity less than or equal to the threshold capacity listed in Table 1.
- B. Tier 2 battery energy storage systems include battery energy storage systems that are not included in Tier 1, have an aggregate energy capacity greater than the threshold capacity listed in Table 1, and have an aggregate energy capacity less than 600 kWh.

Table 1: Battery Energy Storage System Tier 2 Threshold Quantities

Battery Technology	Capacity
Flow batteries	20 kWh
Lead acid, all types	70 kWh
Lithium, all types	20 kWh
Nickel cadmium (Ni-Cd)	70 kWh
Nickel metal hydride (Ni-MH)	70 kWh
Other battery technologies	10 kWh

C. Tier 3 battery energy storage systems include either:

- (1) Battery energy storage systems with an aggregate energy capacity greater than or equal to 600 kWh;  
or
- (2) Battery energy storage systems with more than one storage battery technology provided in a room or indoor area.

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

**CODE ENFORCEMENT OFFICER:** The Code Enforcement Officer of the Town of Clay.

**COMBUSTIBLE STORAGE FACILITY:** Any facility dedicated to the large-scale storage of gasoline, propane, natural gas, fuel oil, or similar products stored in permanent and stationary storage.

**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.

**CORRELATED COLOR TEMPERATURE:** The specification of the color appearance of the light emitted by a lamp, relating its color to the color of light from a reference source when heated to a particular temperature, measured in degrees Kelvin (K).

**CRITICAL TRANSPORTATION INFRASTRUCTURE:** Roadways or railways that, if closed, isolate residents, seasonal dwellings, or camping sites from egress from the region.

**DEDICATED-USE BUILDING:** A building that is built for the primary purpose of housing battery energy storage system equipment and is classified as Group F-1 occupancy as defined in the International Building Code. It is constructed in accordance with the Uniform Code, and it complies with the following:

- A. The building's only permitted primary use is for battery energy storage, energy generation, and other electrical-grid-related operations;
- B. 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;

- C. No other occupancy types are permitted in the building; and
- D. Administrative and support personnel are permitted in incidental-use areas within the buildings that do not contain battery energy storage system, provided the following:
  - (1) The areas do not occupy more than 10-percent of the building area of the story in which they are located; and
  - (2) A means of egress is provided from the incidental-use areas to a public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy systems.

**DISASTER RESPONSE FACILITY:** Any building or structure that serves a disaster response role for the community, including, but not limited to, schools, hospitals, police stations, fire stations, public libraries, animal or human detention or shelter facilities, and garages or marina berths (and the berthing access pathways) providing dedicated storage of emergency response equipment.

**DWELLING UNIT:** One or more rooms arranged for complete, independent housekeeping purposes with space for eating, living, and sleeping, facilities for cooking, and provisions for sanitation.

**ENERGY CODE:** The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Chapter, as currently in effect and as hereafter amended from time to time.

**FIRE CODE:** The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Chapter, as currently in effect and as hereafter amended from time to time.

**FLOW BATTERY:** A type of rechargeable battery that uses typically large, separated liquid reservoirs of electrolytes that flow through a reaction zone to store, charge, and discharge energy. These electrolytes are typically nonflammable.

**INSTALLED HEIGHT:** The height above average finished grade of the lowest point on an installed luminaire.

**KELVIN:** A unit increment of temperature which is used as a color temperature scale of a light bulb. The symbol for Kelvin is "K."

**LEAD-ACID BATTERY:** A rechargeable battery that is comprised of lead electrodes immersed in sulfuric acid electrolyte. These batteries may be flooded, vented, sealed, or may come in other form factors. They may produce hazardous gases during normal operations.

**LITHIUM-ION BATTERY:** A storage battery with lithium ions serving as the charge carriers of the battery. The

electrolyte is typically a mixture of organic solvents with an inorganic salt and can be in a liquid or a gelled polymer form.

**LUMENS PER NET ACRE:** The total number of lumens produced by all lamps utilized in outdoor lighting on a property divided by the number of acres, or part of an acre, of the property to be illuminated. For the purpose of this calculation, the initial lumen rating declared by the manufacturer, which consists of the lumen rating of a lamp at the end of 100 hours of operation, shall be used.

**LUMINAIRE:** An individual lighting assembly, including the lamp and any housings, reflectors, globes, lenses, shields, or other components designed to block or distribute light. For the purposes of this Chapter, an internally illuminated sign is not considered a luminaire.

**MODULE:** A combination of multiple battery cells electrically connected and housed within a protective casing.

**NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL):** A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

**NEC:** National Electric Code.

**NFPA:** National Fire Protection Association.

**NICKEL-BASED BATTERY:** A rechargeable battery in which the positive active material is nickel oxide, the negative contains either cadmium (Nickel-cadmium, Ni-Cd), hydrogen ions stored in a metal-hydride structure (Nickel-metal hydride, Ni-MH), or zinc (Nickel-zinc, Ni-Zn) as the electrode and the electrolyte is potassium hydroxide.

**NON-DEDICATED-USE BUILDING:** All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements, including all other occupancy types such as, but not limited to, commercial, industrial, offices, and multifamily housing.

**NONPARTICIPATING PROPERTY:** Any property that is not a participating property.

**OCCUPIED COMMUNITY BUILDING:** Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, day-care facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

**ONE- TO TWO-FAMILY DWELLING:** A building that contains not more than two dwelling units with independent cooking and bathroom facilities.

**PARTICIPATING PROPERTY:** A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate), regardless of whether any part of a battery energy storage system is constructed on the property.

**SPECIAL FLOOD HAZARD AREA:** The land area covered by the floodwaters of the base flood is the special flood hazard area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

**THERMAL RUNAWAY:** A condition whereby individual battery cells enter an uncontrollable, self-heating state in which heat is generated at a higher rate than it can be dissipated. Thermal runaway events can result in ejection of shrapnel, particulates, and/or toxic/flammable gas, as well as extremely high temperatures, smoke, and fire. Fires caused by thermal runaway or the thermal runaway itself can heat adjacent cells to critical temperatures, resulting in a cascading thermal runaway.

**TOWN:** The Town of Clay.

**TOWN BOARD:** The Town of Clay Town Board.

**UNIFORM CODE:** The New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Chapter, as currently in effect and as hereafter amended from time to time.

**§209-4 Applicability.**

- A. The requirements of this Local Chapter shall apply to all Battery Energy Storage Systems permitted, installed, or modified in the Town after the effective date of this Chapter, excluding general maintenance and repair, but including all battery energy storage systems for which an application of any type was pending as of the effective date of Local Chapter Number # of the Year 2026.
- B. Battery energy storage systems constructed or installed prior to the effective date of this Local Chapter shall not be required to meet the requirements of this Local Chapter.
- C. Modifications to, retrofits, or replacements of a battery energy storage system constructed or installed prior to the effective date of this Chapter that increase the total battery energy storage system designed discharge duration, storage capacity, or power rating shall be subject to this Chapter.

**§209-5 General Requirements.**

- A. A building permit and battery energy storage system permit shall be required for installation of all battery energy storage systems.
- B. Issuance of permits and approvals by the Town Board and/or Planning Board shall include review pursuant to Article 8 of the Environmental Conservation Chapter and its implementing regulations at 6 NYCRR 617, also known as the State Environmental Quality Review Act or SEQRA.
- C. Prior to operation, electrical connections must be inspected by an appropriate licensed electrical inspection person or agency, as determined by the Town. An electrical inspector must supply written verification that all electrical connections pass inspection.

- D. All battery energy storage systems, all dedicated use buildings, and all other buildings or structures that contain or are otherwise associated with a battery energy storage system and subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.
- E. All battery energy storage systems, regardless of tier, are subject to a battery energy storage system permit and fee. Such fee shall be established by the Town Board and may be changed from time to time by resolution.
- F. Where a conflict exists between two or more codes, the more stringent code(s) shall apply.
- G. For battery energy storage systems subject to site plan review, the Town shall impose, and may update as appropriate, a schedule of fees or a deposit, to recover expenses associated with engineering, environmental, other professional services, and/or legal services determined to be reasonably necessary in the processing of an application under this Chapter. All fees for outside professionals shall be paid by the applicant. All approved sites and buildings shall be demarcated with a weatherproof decal, sticker, or sign to uniformly identify the presence of a battery energy storage system. Such decal, sticker, or sign shall be consistent with the requirements of Uniform Code Section 1206.11.8, and shall be placed on the electric meter, on the main electrical switch panel, and by the front entry door.
- H. Nothing listed herein shall be deemed to restrict the Planning Board or Town Board, as appropriate, from requiring stricter standards for safety, the mitigation of environmental impacts, and/or to protect the character of existing neighborhoods.

**§209-6 Permitting Requirements for Tier 1 Battery Energy Storage Systems.**

Tier 1 battery energy storage systems are permitted in all zoning districts, are subject to a battery energy storage system permit, and are exempt from site plan review.

**§209-7 Permitting Requirements for Tier 2 Battery Energy Storage Systems.**

Tier 2 battery energy storage systems shall be permitted in the Highway Commercial (HC-1), Regional Commercial (RC-1), Industrial 1 (I-1) and Industrial 2 (I-2) Zoning Districts only, are subject to a battery energy storage system permit, and are subject to site plan review.

**§209-8 Permitting Requirements and Procedures for Tier 3 Battery Energy Storage Systems.**

Tier 3 battery energy storage systems shall be permitted in the Industrial 1 (I-1) and Industrial 2 (I-2) Zoning Districts only, are subject to site plan review, and the issuance of a BESS special use permit by the Town Board.

- A. Applications for the installation of Tier 3 battery energy storage system shall be:

- (1) Reviewed by the Commissioner of Planning & Development for completeness. An application shall be complete when it addresses all matters listed in this Chapter, including, but not necessarily limited to

compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and matters relating to the proposed battery energy storage system and floodplain utility lines and electrical circuitry, signage, lighting, vegetation and tree-cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, permit time frame, and abandonment. Applicants shall be advised within 45 calendar days of the completeness of their application or any deficiencies that must be addressed prior to substantive review;

(2) Subject to a public hearing to hear all comments for and against the application. The Town Board shall have a notice printed in a newspaper of general circulation in the Town at least 10 days in advance of such hearing. Applicants shall have delivered the notice by first-class mail to adjoining landowners or landowners within 1,000 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Town Board at the public hearing;

(3) Referred to the Onondaga County Planning Department pursuant to General Municipal Chapter §239-m and the Town Planning Board for site plan review and advisory report.

B. Upon closing of the public hearing, the Town Board shall take action on the application within 62 days of the public hearing, which can include approval, conditional approval, or denial. The 62-day period may be extended upon consent of the Town Board and applicant.

C. Underground requirements. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles with new easements and rights-of-way.

D. Vehicular paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

E. Signage.

(1) Pursuant to NFPA 855 Annex B, Section B.4 – Hazard Considerations Under Emergency/Abnormal Conditions, NFPA 704 placarding in connection with all battery energy storage systems and signage in compliance with ANSI Z535 shall be of an appropriate size and material and shall be placed outside the access gate or facility door. Such placard shall also include the following:

a. The type of battery technology;

b. Any special hazards associated with said technology;

c. The type of fire-suppression system installed in the area of the battery energy storage systems;  
and

d. Twenty-four-hour emergency contact information (name/number), including applicable local, public, and private entities.

(2) As required by the National Electric Code (NEC), 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 and substations.

F. Lighting.

(1) Except as otherwise provided herein, all outdoor lighting at Tier 3 battery energy storage system sites shall be designed, installed, and operated in such a manner as to reduce light pollution. Where practicable, and if consistent with applicable Chapter, reflective paints and self-luminous markers shall be used for signs, curbs, steps, and other locations to reduce the need for permanently installed outdoor lighting.

(2) Luminaires:

a. All outdoor luminaires shall be fully shielded and installed in the proper orientation to achieve fully shielded performance with respect to the horizontal plane.

b. The installed height of an outdoor luminaire shall not exceed twenty-five (25) feet.

c. All light sources shall have a correlated color temperature of 3,000° Kelvin or less.

d. Upward-directed lighting is prohibited.

e. All outdoor luminaires shall be controlled by a system that automatically extinguishes them when sufficient daylight is available using a control device or system such as a photoelectric switch, astronomic time switch, or equivalent functions from a programable lighting controller, building automation system, or lighting energy management system.

(3) The total light output from all luminaires used for outdoor lighting shall not exceed 100,000 lumens per net acre. Lighting installations located under canopies shall contribute 50-percent of their light output toward this limit.

(4) Exemptions. The following are exempt from the lighting restrictions set forth herein:

a. Lighting required by Town, county, state, or federal Chapter, including single-purpose emergency egress lighting on a structure;

b. Portable lighting temporarily used for maintenance or repair, provided that it does not create a

hazard or nuisance and is deployed in such a manner as to minimize transmission of light offsite;

- c. Upward-directed lighting to illuminate a flag. Flag illumination shall have a maximum inclination of 45° with a light output of up to 1,100 lumens and 60° with a light output of up to 800 lumens;
  - d. Upward-directed lighting to illuminate a ground-mounted, non-internally illuminated sign. Sign illumination shall have a maximum inclination of 45° and a maximum light output is 1,100 lumens;
  - e. Lighting controlled a motion-activated sensor that illuminates the luminaire for no more than five (5) minutes upon activation, provided that said luminaire has the necessary shielding and/or beam-angle control such that the light source is not visible along any property line, as viewed at a height of 36 inches above grade;
  - f. Lighting activated automatically in response to an alarm, provided that said lighting is programmed to deactivate no more than thirty (30) minutes after the event that triggered the alarm has ended; and
  - g. Lighting under canopies and garage entrances are exempt from the automatic lighting control requirement only.
- G. Vegetation and tree cutting. Areas within 20 feet on each side of Tier 3 battery energy storage systems 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 covers 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.
- H. Noise. The 10-minute average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 60 dBA as measured at the extremities of the battery energy storage system-sited property, as well as the outside wall of any nonparticipating property and occupied community building. The “average noise” requirement shall be conducted when all cooling systems and associated fans/blowers are running at their loudest speed setting. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate initial compliance only if in situ readings are also provided as taken by a qualified acoustical consultant or engineer upon commissioning of the project. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard. No momentary noise generation shall exceed 90 dBA.
- J. Decommissioning
- (1) Battery energy storage systems that have been abandoned for one year shall be removed at the owner's and/or operator's expense which, at the owner's option, may come in part or whole from any

security made with the Town.

- (2) Decommissioning plan. The applicant shall submit a decommissioning plan developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall also include:
  - a. The anticipated life of the battery energy storage system;
  - b. The anticipated years to large (>10-percent of initial equipment capital cost) reinvestments or component replacements;
  - c. A narrative description of the activities to be accomplished for removing all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
  - d. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed;
  - e. Disposal of all solid, liquid, and/or hazardous waste in accordance with local, state, and federal waste disposal regulations; and
  - f. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system that has been damaged by a fire or other event.
- (3) The Town at its option may obtain its own decommissioning plan, the cost of which shall be borne by the applicant.
- (4) Security, limited access agreement, assessment of expenses, and insurance.
  - a. The Town of Clay recognizes the importance of the need to possess adequate security in an easily convertible and usable form in the event the Town is forced to act to decommission the arrays and remediate a property if a permitted operation is abandoned. Clay also recognizes the long-term nature of some of these projects and the need to have a full cash security posting before the life of the project expiration date. Accordingly, the Town of Clay will require the posting of a cash component of no less than 50-percent of the total security amount determined, in addition to the initial posting of an irrevocable letter of credit. The Town shall require all applicants to post additional cash with corresponding decreases in the letter of credit posting throughout the term

of the project life until the Town has a full cash security posting. The deposit, executions, or filing with the Town Comptroller of cash and/or irrevocable letter of credit shall be in an amount set by the Town Engineer or Attorney, and sufficient to ensure the good-faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. In addition to the NYSERDA guidelines, the security amount shall factor in: mobilization costs, a minimum 2.5-percent escalation, a 30-percent contingency and consideration that prevailing wage rates will be required should the decommissioning fall to the Town.

- b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash and/or letter of credit security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit and/or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed. The Town may also bring legal action against the applicant for any unrecovered losses.
- c. In the event of default or abandonment of the battery energy storage system, the system shall be decommissioned as set forth herein.
- d. Any expenses or losses incurred by the Town and not reimbursed by any security in connection with the cost of removal of abandoned equipment or other related items and legal fees and expenses shall be levied and collected in the same manner as provided in the Town Chapter for the levy and collection of a special ad valorem levy on the real property on which the battery energy storage system is located. This assessment shall be assessed on the next assessment against said property, and the same shall be levied and collected in the same manner as the regular Town tax.
- e. Insurance. The applicant and/or owner shall maintain a current insurance policy which will cover the installation and operation of the Tier 3 project at all times in the minimum amount of \$5,000,000 property and personal liability coverage and provide proof of such policy to the Town on an annual basis.
- f. Limited site access agreement. The Town of Clay shall require all applicants to enter into a limited site access agreement upon the posting of security to ensure the Town may access the property in the event the Town is forced to act to decommission the project. The agreement shall be prepared by the Town Attorney in a form and content acceptable to the Town Board.

K. System Owner's Representative.

- (1) Any applicant and subsequent system owner shall have an individual on-site within one (1) hour of any emergency at any time to manage the emergency scene in conjunction with Town authorities, fire department(s), and other first responders. All emergency response activities shall be under the

command of the local fire authority in accordance with the Incident Command System (ICS). For the purposes of this provision, emergencies include but are not limited to fire, explosions, smoke, leakage, excessive noise, and requests for medical assistance.

- (2) Any applicant and subsequent system owner shall have a trained representative available by telephone within fifteen (15) minutes to provide direction to first responders in case of an emergency. Said representative shall be fluent in the English language. The applicant and system owner shall consult with local fire departments to determine if two-way communication can be established from the site location or if a landline must be added to provide for such communication.
- (3) A system owner shall provide and maintain in working order a first responder panel that displays, in real-time, the operational status of the facility as well as clear language for fire response procedures. The system owner shall provide and keep operational a system for automated notification of any emergency events to inform local first responders.

L. Setbacks.

- (1) All Battery Energy Storage System (BESS) proposals shall comply with the minimum yard, setback, and dimensional requirements applicable to the underlying zoning district in which the project is located. Required setbacks shall be measured from the nearest property line of the subject parcel to the closest exterior component of the BESS facility, including but not limited to equipment enclosures, battery units, inverters, transformers, and security fencing.

In recognition of the scale and potential operational impacts associated with larger facilities, Tier 2 and Tier 3 BESS installations shall provide an additional fifty (50) feet of setback beyond the minimum setback otherwise required by the subject zoning district when the subject site abuts a residence and/or a residential zone. The required additional setback shall be applied to all yard areas.

No portion of the BESS facility, including fencing or associated equipment, shall be located within any required setback area.

M. Roads.

- (1) Applicants shall avoid damaging roads and shall be responsible for mitigation of damage, if any. If the Town Board shall so direct, a Town Roads Damage Avoidance and Mitigation Plan may be required and shall contain the following:
  - a. Identification of potential road usage. The applicant shall identify, with the approval of the Highway Superintendent and Town Engineer, all state, county, and Town roads to be used within the Town of Clay to transport equipment, parts, and material for construction, operation, and/or maintenance of the battery energy storage system and related components.
  - b. Documentation of road conditions. Prior to construction and decommissioning, the Highway

Superintendent, Town Engineer, and/or their designee shall document the then-current road conditions of the Town roads identified for use, with all associated costs paid by the applicant as provided in this Chapter. Conditions shall be reassessed and documented within thirty (30) days after the completion of construction and decommissioning, or as soon thereafter as weather permits.

- (2) Any road preparation and/or maintenance necessitated or occasioned by the construction or decommissioning of the proposed battery energy storage system or damage caused by the applicant, operator, and/or their contractors during construction and decommissioning shall be promptly completed or required, as appropriate, at the applicant or operator's expense.
- (3) If a Town Roads Damage Avoidance and Mitigation Plan is prepared, a copy shall be forwarded to the Onondaga County Department of Transportation and the New York State Department of Transportation.

**§209-9 Site Plan Application.**

A. Site plan approval is required for Tier 2 and Tier 3 battery energy storage systems. In addition to the requirements imposed by Section 230-27 of the Zoning Ordinance, site plan applications shall include the following information:

- (1) Property lines and physical features, including roads, and all improvements for the project site as shown on a current survey prepared and certified by a licensed land surveyor;
- (2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures;
- (3) A one- or three-line (as determined by the Planning Board) electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code-compliant disconnects and over-current devices;
- (4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters, and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit;
- (5) Name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of a building permit, name, address, phone number, and signature of the project applicant as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system;
- (6) Zoning district designation for the parcel(s) of land comprising the project site and those immediately adjacent thereto;

(7) Commissioning plan.

- a. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Battery energy storage system commissioning shall be conducted by a New York State (NYS) licensed professional engineer or NYS registered architect after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town Board prior to final inspection and approval and maintained at an approved on-site location.
- b. Such plan shall comply with the Uniform Code and include, at a minimum, the following information:
  - i. A narrative description of the activities that will be accomplished during each phase of commissioning, including the personnel intended to accomplish each of the activities;
  - ii. A listing of the specific battery energy storage system and associated components, controls and safety-related devices to be tested, a description of the tests to be performed and the functions to be tested;
  - iii. Conditions under which all testing will be performed that are representative of the conditions during normal operation of the system;
  - iv. Documentation of the owner's project requirements and the basis of design necessary to understand the installation and operation of the battery energy storage system;
  - v. Verification that required equipment and systems are installed in accordance with the approved plans and specifications;
  - vi. Integrated testing for all fire and safety systems;
  - vii. Testing for any required thermal management, ventilation, or exhaust systems associated with the battery energy storage system installation;
  - viii. Preparation and delivery of operation and maintenance documentation;
  - ix. Training of facility operating and maintenance staff;
  - x. Identification and documentation of the requirements for maintaining system performance to meet the original design intent during the operation phase; and
  - xi. Identification and documentation of personnel who are qualified to service, maintain, and decommission the battery energy storage system, and respond to incidents involving the battery energy storage system, including documentation that such service has been contracted for.

- c. Energy storage system commissioning shall not be required for lead-acid and nickel-cadmium battery systems at facilities under the exclusive control of communications utilities that comply with NFPA 76 and operate at less than 50 VAC and 60 VDC;
- (8) Fire safety compliance plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
- (9) System and property operation and maintenance manual.
- a. Such manual or plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing, and commissioning information and shall meet all requirements set forth in the Uniform Code.
  - b. The operation and maintenance manual shall be provided to both the battery energy storage system owner and their operator before the system is put into operation. The battery energy storage system shall be operated and maintained in accordance with the manual and a copy of the documentation shall be retained at an approved on-site location to be accessible to facility personnel, fire code officials, and emergency responders.
  - c. In addition to complying with the Uniform Code, the battery energy storage system operation and maintenance manual shall, at a minimum, include design, construction, installation, testing, and commissioning information associated with the battery energy storage system as initially approved after being commissioned, as well as the following information:
    - i. Manufacturer's operation manuals and maintenance manuals for the entire battery energy storage system or for each component of the system requiring maintenance, that clearly identify the required routine maintenance actions;
    - ii. The name, address, and telephone number of a service agency that has been contracted to service the battery energy storage system and its associated safety systems;
    - iii. Maintenance and calibration information, including wiring diagrams, control drawings, schematics, system programming instructions, and control sequence descriptions for all energy storage control systems;
    - iv. Desired or field-determined control set points that are permanently recorded on control drawings at control devices or, for digital control systems, in system programming instructions;
    - v. A schedule for inspecting and recalibrating all battery energy storage system controls;
    - vi. A service record log form that lists the schedule for all required servicing and maintenance actions and space for logging such actions that are completed over time and retained on site; and
    - vii. Inspection and testing records;

(10)Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town Board;

(11)Emergency operations plan.

- a. An emergency operations plan shall include the following information:
  - i. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe startup following cessation of emergency conditions;
  - ii. Procedures for inspection and testing of associated alarms, interlocks, and controls;
  - iii. Procedures to be followed in response to notifications from the battery energy storage management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed-upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure;
  - iv. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures shall include at a minimum activation of an alarm, notification of a local fire department, evacuation of personnel, de-energization of equipment, and control/extinguishing of the fire if appropriate;
  - v. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required;
  - vi. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility;
  - vii. Other procedures as determined necessary by the Town to provide for the safety of occupants and emergency responders;
  - viii. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures;
  - ix. A map of the area indicating emergency access roads with turning radii dimensions and a turn-around loop; and
  - x. A listing of the required personal protective equipment (including self-contained breathing

apparatus) to be on-site immediately;

(12) In the case of a battery energy storage system utilizing lithium-ion batteries, a Hazard Mitigation Analysis (HMA) and Fire Risk Assessment pursuant to NFPA 855 Annex G and New York State Fire Code.

- a. Such analysis and assessment shall include, in addition to or supplemental to the requirements of NFPA 855 Annex G:
  - i. A detailed analysis of the available water supply for the fire suppression system and intended fire suppression system design. Capacity for a minimum of two external fire hose streams shall be included for potential fire department use of intervention is required by the local fire department, provided, however, that the required quantity of hose streams may be increased based on consultation with the local responsible and backup fire departments;
  - ii. Emergency equipment availability;
  - iii. Availability of operator supervision in a timely manner in accordance with the current New York State Fire Code (Uniform Code) as well as any requirements set forth herein;
  - iv. Capability and required actions of local first responders. Special concerns shall be given to prior response data of the local fire departments and the applicant, and the documentation shall be clear as to who has decision making power in an emergency. This shall be reinforced through the first responder panel;
  - v. Environmental considerations in the event of an emergency; and
  - vi. A determination as to whether a backup natural gas or propane generator with a power output and runtime satisfactory to the Planning Board shall be required sufficient to operate the cooling system and other critical components if the electric grid is not delivering power;
- b. The Hazard Mitigation Analysis shall be a “living document” which shall be updated to reflect changes in operation, configuration, and response requirements, including a post-installation update to account for changes in design, if any, that occurred between its initial preparation and final installation;

(13) A traffic safety circulation plan, taking into account general internal circulation, loading/truck movements, and similar factors. The plan shall identify appropriate impact protection including but not limited to traffic barriers, bollards, and walls; and

(14) Any other procedure or measure deemed necessary by the Planning Board to provide for the safety of occupants, neighboring properties, and first responders.

- B. Height. The maximum height for Tier 2 and Tier 3 battery energy storage systems shall be 15 feet.
- C. Fencing requirements. Tier 2 and Tier 3 battery energy storage systems, including all mechanical equipment, shall be enclosed by a fence at least eight (8) feet high with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building. Fences shall not interfere with ventilation or exhaust ports and shall bear warning/no trespassing signs in the English and Spanish languages no greater than fifty (50) feet apart.
- D. Screening and visibility. Tier 2 and Tier 3 battery energy storage systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfere with ventilation or exhaust ports.
- E. Special and additional requirements for Tier 3 applications:
  - (1) Plans and drawings of the proposed Tier 3 installation signed, marked and/or stamped by a professional engineer or architect registered in New York State showing the proposed layout of the entire site along with a description of all components whether on-site or off-site, existing vegetation and proposed clearing and grading of all sites involved. The plans and development plan shall be drawn in sufficient detail and shall further describe:
    - a. Property lines and physical dimensions of the proposed site, including contours at five-foot intervals;
    - b. Location, approximate dimensions and types of all existing structure(s) and uses on the site;
    - c. Location and elevation of the proposed Tier 3 installation;
    - d. Location of all existing aboveground utility lines showing the connection of the system to the utility line within 1,500 linear feet of the site;
    - e. Where applicable, the location of all transmission facilities proposed for installation. All transmission lines and wiring associated with a Tier 3 project shall be buried underground and include necessary encasements in accordance with the National Electric Code and Town requirements. The Town Board may waive this requirement if sufficient engineering data is submitted by the applicant demonstrating that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead electric utility/transmission lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the public utility company's requirements for interconnection. Any connection to the public utility grid must be inspected by the appropriate public utility;
    - f. Location of all structures proposed as part of the installation;

- g. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, and similar features;
- h. A plan for clearing and/or grading of the site and a stormwater pollution prevention plan (SWPPP) for the site;
- i. Documentation of utility notification, including an electric service order number; and
- j. The manufacturer's or installer's identification and appropriate warning signage shall be posted at the site and be clearly visible.

F. Prior to the issuance of the building permit or final approval by the Town Board, engineering documents must be signed and sealed by a New York State licensed professional engineer or registered architect.

**§209-10 Ownership Changes.**

If the owner or operator of a battery energy storage system changes or the owner of the property upon which a battery energy storage system is sited changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system or the property upon which a battery energy storage system is sited shall notify the Town of such change in ownership or operator within 30 days of the ownership change by certified mail to both the Town Clerk and Town Supervisor and addressed to the Clay Town Hall. The special use permit and all other local approvals for the battery energy storage system shall be void if a new owner or operator fails to provide written notification to the Town as set forth above. Reinstatement of a void special use permit shall be subject to the same review and approval processes for new applications under this Chapter.

**§209-11 Safety.**

A. System certification.

- (1) Battery energy storage systems and equipment shall be listed by a nationally recognized testing laboratory to UL 9540 or CAN 9540 (standard for battery energy storage systems and equipment) with subcomponents meeting each of the following standards that are applicable based on the storage type (electrochemical, thermal, mechanical):
  - a. UL 1973 (Standard for batteries for use in stationary, vehicle auxiliary power and light electric rail applications);
  - b. UL 1642 (Standard for lithium batteries);
  - c. UL 1741 or UL 62109 (inverters and power converters);
  - d. Certified under the applicable electrical, building, and fire prevention codes as required; and

- e. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.
- (2) Lead-acid and nickel-cadmium battery systems installed in facilities under the exclusive control of communications utilities and operating at less than 50 VAC and 60 VDC in accordance with NFPA 76 are not required to be listed.
- B. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 battery energy storage system is located in an ambulance district, the local ambulance corps. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.
  - C. Where deemed necessary by the Planning Board in the case of a Tier 2 application or the Town Board in the case of a Tier 3 application, the Applicant shall ensure emergency access to the Facility Area for local first responders by installing an emergency lock box or similar device, in a location and of a type subject to approval by the Fire Chief of the volunteer fire department responsible for fire protection at the site.
  - D. The system owner or operator shall notify local fire departments, the Onondaga County Department of Emergency Management, and the Town of Clay at least one (1) week prior to any scheduled maintenance or battery removal/installation.
  - E. Security cameras shall be installed if required as part of the Hazard Mitigation Analysis or if recommended by the Town Supervisor or his/her designee.
  - F. Compliance with the Uniform Code and applicable standards of NFPA 855 shall be certified annually to the Code Enforcement Officer.

**§209-12 Permit Timeframe and Abandonment.**

- A. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 12 months after issue, provided that a building permit is issued for construction and construction is substantially commenced within that period. In the event that construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town Board, within 12 months after approval, the Town may extend the time to complete construction for an additional 120 days by resolution. If the expiration time is not extended, all approvals shall become null and void.
- B. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Tier 3 battery energy storage system

and restoration of the site in accordance with the decommissioning plan.

**§209-13 Additional Environmental Regulations.**

A. Avoidance Areas. Battery energy storage systems shall not be located in the following areas:

- (1) Flood Hazard Zones, unless compliance with FEMA regulations can be achieved without significant visual or safety impacts;
- (2) Open space;
- (3) On parcels containing prime agricultural soils, provided, however, that a Tier 1 system may be placed on a portion of the parcel not containing prime agricultural soils;
- (4) Near historically and culturally significant resources, unless it can be demonstrated that an installation will not adversely affect the resource and is fully reversible;
- (5) Areas of exceptional or unique social archaeological, recreational, or educational value;
- (6) Designated conservation areas;
- (7) Areas adjacent to public, parklands, trails, or active recreation; and
- (8) Any Critical Environmental Areas adopted pursuant to SEQRA and/or the habitats of endangered species.
- (9) Wetlands Compliance.

All BESS proposals shall comply with all applicable federal and New York State freshwater wetland Chapters and regulations, including those administered by the New York State Department of Environmental Conservation (NYSDEC). Where regulated wetlands or adjacent areas are present on or near the project site, the applicant shall identify and delineate such resources and obtain all required permits, approvals, and jurisdictional determinations from NYSDEC prior to the issuance of any local approval, building permit, or commencement of construction.

The applicant shall provide documentation satisfactory to the reviewing authority demonstrating compliance with all applicable NYSDEC wetland requirements. No land disturbance, clearing, grading, or construction activity shall occur within any regulated wetland or adjacent area except in accordance with duly issued permits.

- B. If ethylene glycol is used as part of a liquid cooling system, a containment pan shall be installed underneath the facility as a supplemental secondary containment, together with an off-site disposal plan satisfactory to the Planning Board.
- C. In the event of a fire or explosion, all expenses related to cleanup and remediation shall be paid or reimbursed by the system owner or operator.

**§209-14 Enforcement.**

Any violation of this Battery Energy Storage System Chapter shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town of Clay.

**§209-15 Severability.**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of this Chapter, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional or in any way null and/or void, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

**§209-16 Waiver.**

The Town Board may, under appropriate conditions or circumstances, and in its absolute discretion, waive one or more of the submission requirements contained herein.

**§209-17 Fees.**

Fees for application are those as established by the Town of Clay by the resolution of the Town Board, and it shall be the responsibility of the applicant to reimburse the Town for any and all reasonable and necessary legal, engineering, and other professional fees incurred by the Town in reviewing and administering an application for a battery energy storage system under this Chapter.

**§209-18 Community Host Agreement Authorization.**

For any proposed Tier 2 or Tier 3 BESS, the Town Board shall have the authority, but not the obligation, to require the applicant to enter into negotiations for a Host Community Agreement (HCA) as a condition of approval.

The Town Board may authorize such negotiations upon receipt of a complete application or at any time during the review process. The purpose of the Host Community Agreement shall be to address potential impacts associated with the project and to ensure that the Town and its residents are appropriately protected and compensated. Such agreement may include, but shall not be limited to, provisions relating to community benefits, impact mitigation, emergency services coordination, infrastructure improvements, decommissioning assurances, and other matters deemed necessary by the Town Board.

Execution of a Host Community Agreement, in a form acceptable to the Town Board and Town Attorney, may be required prior to the issuance of any special use permit, site plan approval, building permit, or certificate of occupancy for a Tier 2 or Tier 3 BESS.

Nothing herein shall be construed to limit the Town Board's authority to deny an application or to impose conditions pursuant to its zoning and police powers in the absence of a Host Community Agreement.