

APPROVED

At the REGULAR MEETING of the Town Board, Town of Clay, Onondaga County, held at the Town Hall, Clay, New York on the 20th of April 2026 at 7:30 P.M., there were:

PRESENT:

Joseph Bick	Deputy Supervisor/ Councilor
David Capria	Councilor
Eugene Young	Councilor
Edward Wisnowski	Councilor
Ryan Russell	Councilor
Courtney Gauthier	Councilor
Cheryl Decker	Deputy Town Clerk
Brian Bender	Commissioner of Planning and Development
Robert Germain	Town Attorney
Ron DeTota	Town Engineer

ABSENT:

Damian Ulatowski	Supervisor
Jill Hageman-Clark	Town Clerk

OTHERS PRESENT:

Hal Henty; Planning Board Member

The meeting was called to order by Deputy Supervisor Bick at 7:30 P.M. All present joined in the Pledge of Allegiance.

Approval of Minutes:

Deputy Supervisor Bick made a motion to approve the minutes of the April 6, 2026, Regular Meeting. Motion was seconded by Councilor Young.

Ayes – 6 and Noes – 0. *Motion carried.*

Correspondence:

Joe Bick opened the meeting by asking the residents if they had anything for the town board.

Caitlyn and Jarrett Winders spoke on the ongoing noise issues at Sharkey's and asked how long it would take to resolve the situation. They stated that Sharkey's has been sited and ignore any violations they received. Deputy Supervisor Bick stated that concerts may have to be added to the code book, that would add a code for hours and frequency of the concerts. Caitlyn added that the town of Salina has also been contacted. Councilor Capria stated they have discussed this issue in

previous meetings. Deputy Supervisor Bick stated he has no knowledge of any correspondence with the Town of Salina. Deputy Supervisor Bick also stated he is covering for the Town Supervisor and will address the issue.

Cancellation and/or requested adjournments.

Deputy Supervisor Bick said he knew of no requests for adjournments or cancellations.

Regular Meeting:

Special Permit (PH) -Town Board Case # 1248 - STEVEN CALOCERINOS /4793 BUCKLEY ROAD:

Public hearing to consider the application of Town Board Case #1248: **STEVEN CALOCERINOS/4793 BUCKLEY ROAD** for a Special Permit pursuant to Section 230-13 A.(2)(e)[7] – Two-family dwelling, to allow for conversion of an existing single-family residence to a two-family dwelling for property located at **4793 Buckley Road, Tax Map No. 088.-01-13.1**, consisting of +/- 3.53 acres of land. The property is located in the RA-100 Residential Agricultural district.

Steven Calocerinos presented changing the single-family residence to a 2-family residence with separate units and separate tenants. The only potential structure change would be to add an outdoor stairwell to the back of the structure for access to the upper unit. Councilor Young asked if the property was zoned for rental and asked if he had plans to add more rentals to the property. Steven Calocerinos stated he had no plans to add any additional rentals to the property.

There being no more questions or comments, Deputy Supervisor Bick closed the hearing.

LOCAL LAW No. 4 OF THE YEAR 2026 (CPH) – Creating a New Town Code Chapter 209 entitled “Town of Clay Battery Energy Storage System Law”:

Public hearing to consider proposed **LOCAL LAW NO. 4 OF THE YEAR 2026** creating a new Town Code, **Chapter 209** to be titled the **“Town of Clay Battery Energy Storage System Law.”** The Town recognizes battery storage systems represent a reliable and renewable energy storage system but also recognizes the technology is new and that we do not have a governing ordinance to address the use. The purpose of the new Chapter is to create guidelines to help the Town

properly site battery energy storage systems and to balance protection of our environment and the health and safety of our residents with the promotion of safe battery energy system uses.

Deputy Supervisor Bick asked if there were any questions about the Battery Energy Storage Systems Law.

Sera Yoon Attorney with HodgsonRuss law firm representing Aurora Renewables submitted correspondence from Aurora prior to the meeting. Exhibits #1A and #1B (see attached).

She stated the project was complex and evolving. She also stated Aurora shares the same goal as the town to protect the public. Sera Yoon wanted to address the proposed setback of at least 250 feet from all property lines and questioned if the 250 feet was added to the minimum clearance of the 750 feet from any occupied building or the 500 feet from any critical transportation infrastructure.

Ms. Yoon continued by stating an additional 250 feet to the current 750 feet and/or the 500 is highly restrictive and would limit suitable areas.

Jim Hickey landowner on Goguen Drive stated if the additional 250 feet is added it would require at least 8 1/2 acers of land. He stated this complicates the code and excludes projects.

Erik Anderson of Carson Power submitted correspondence prior to the meeting. Exhibit #2 (see attached). Erik stated Carson Power wants to support the Town in its efforts to compose a new ordinance to ensure these projects are safe and reliable. Erik stated this is his 8th public hearing and that the current law drafted for the 250-foot setback would really damage the projects.

Olivia Sproviero of NexAmp also confirmed their submission of comments for the Town Board's consideration Exhibit #C (see attached). Oliva agreed with both Sera Yoon from Aurora Renewables and Erik Anderson from Carson Power regarding the 250-foot setback.

Deputy Supervisor Bick displayed the Proposed BESS Law 2026 (currently available on the Town of Clay website).

Deputy Supervisor Bick stated §209-9 Site Plan Application needs to be amended to address the set back.

Commissioner of Planning and Development Brian Bender stated there would need to be modifications to the current proposed BESS Local Law 2026.

Councilor Young stated it would be posted after changes have been made.

Deputy Supervisor Bick stated he is not closing this public hearing until another draft is complete. Motion was second by Councilor Young.

The public hearing is adjourned until May 4, 2026, at 7:47 P.M.

Ayes-6 and Noes- 0 *Motion carried.*

SPECIAL PERMIT (CPH) Town Board Case #1247 – COMMUNITY BANK/ERIK TURNER:

Councilor Capria moved the adoption of a resolution calling a public hearing on **May 4, 2026**, commencing at **7:38 P.M.**, local time, to consider the application of Town Board Case #1247: **COMMUNITY BANK/ERIK TURNER** for a Special Permit pursuant to Section 230-16(c)[2](e)[2] – Drive-in Service, to allow for construction of a bank with drive-thru services on land located at **4000 State Route 31, Tax Map No. 055.-01-03.1**, consisting of +/- 14.9 acres of land. The subject site is located within the RC-1 Regional Commercial District and involves the placement of the proposed bank on a designated pad within an existing retail plaza. Councilor Capria motioned for public hearing, was seconded by Councilor Young.

Ayes-6 and Noes- 0. *Motion carried*

LOCAL LAW No. 5 OF THE YEAR 2026 (CPH) – amending Town of Clay Town Code Sections 230-11C and 230-16”:

Councilor Russell moved the adoption of a resolution calling a public hearing on **May 4, 2026**, commencing at **7:41 P.M.**, local time, to consider proposed **LOCAL LAW NO. 5 OF THE YEAR 2026**, amending the Town of Clay Town Code Sections 230-11C-Terms Defined to add a new definitions for Smoke Shops to the Code, and by amending Section 230-16 Commercial Districts by adding the need to obtain a Special Permit from the Town Board to operate a Smoke Shop in the RC-1, HC-1 and NC-1 Commercial Zone Districts. Councilor Russell motioned for public hearing, was seconded by Councilor Young.

Ayes-6 and Noes-0. *Motion carried.*

2027 Community Development Block Grant (CDBG):

Councilor Wisnowski moved the adoption of a resolution calling a public hearing on **May 4, 2026**, commencing at **7:44 P.M.**, local time, to consider the **2027** application of street repairs for **Community Development Block Grant (CDBG)** funding for Steelway Blvd. South. Councilor Wisnowski motioned for public hearing was seconded by Councilor Capria.

Ayes-6 and Noes-0. *Motion carried.*

2025 Hazard Mitigation Plan – Town of Clay Annex:

Councilor Wisnowski moved the adoption of a resolution approving and accepting the **2025 Hazard Mitigation Plan** for Onondaga County, **Town of Clay Annex**. The plan is required by state and federal agencies in order for communities in Onondaga County to be eligible for certain types of non-emergency disaster assistance, including funds for mitigation projects. The HMP has been approved by NYS DHSES and FEMA. Councilor Wisnowski motioned for resolution approval, was seconded by Councilor Russell.

Ayes-6 and Noes-0. *Motion carried.*

Grant Funding Application (A) (Several):

Councilor Capria moved the adoption of a resolution authorizing the Supervisor/Deputy Supervisor to apply for grant funding through the Federal Emergency Management Agency (FEMA) FY2024–2025 Building Resilient Infrastructure and Communities (BRIC) program, as administered by the New York State Division of Homeland Security and Emergency Services (DHSES), for the purpose of purchasing and installing a generator for Town Hall, with a required local match of 25%, and authorizing and approving the Supervisor/Deputy Supervisor to execute all necessary documents related therefor. Councilor Capria motioned for the resolution approval, was seconded by Councilor Wisnowski.

Ayes-6 and Noes-0. *Motion carried.*

Agreement (workspace)(A) Town of Clay and National Grid:

Councilor Young moved the adoption of a resolution approving a Temporary Workspace Agreement between the Town and National Grid to allow National Grid to temporarily store trucks and equipment in a portion of the rear of the east parking lot at Town Hall for up to six (6) months to facilitate repairs to existing underground facilities in the National Grid easement. National Grid will compensate the Town the appraised value of the temporary workspace in the amount of \$1,823.39 In exchange for the temporary use of the area. This resolution also authorizes the Supervisor or Deputy Supervisor to execute the agreement. Councilor Young motioned for the resolution approval, was second by Councilor Capria.

Ayes-6 and Noes-0 Motion carried.

Adjournment:

The meeting was adjourned at 8:19 P.M. Upon motion by Councilor Young and second by Councilor Gauthier.

Ayes-6 and Noes-0. *Motion carried.*

Cheryl Decker
Deputy Town Clerk



Henry A. Zomerfeld
Partner
Direct Dial: 716.848.1370
HZomerfe@hodgsonruss.com

April 16, 2026

Via E-Mail (supervisor@townofclayny.gov) and Fed-Ex Overnight

Town of Clay Town Board
c/o Supervisor Damian M. Ulatowski
4401 State Route 31
Clay, New York 13041

Re: Proposed BESS Local Law

Dear Supervisor Ulatowski and Members of the Town Board:

This firm represents renewable energy developer Aurora Renewables Inc. and its subsidiaries and affiliates (collectively, "Aurora"). Aurora has several battery energy storage system ("BESS") projects (collectively, the "Projects") with applications currently pending in the Town of Clay (the "Town"). In addition, several other BESS projects are contemplated. I write in response to the proposed BESS local law (the "Proposed Law") circulated by the Board as part of the public notice for the April 20, 2026, Town Board meeting.

Aurora supports the Town's efforts to adopt a thoughtful regulatory framework for BESS and appreciates the need to pass legislation which permits development while protecting the public health, safety, and welfare. As currently drafted, however, the Proposed Law would operate as a *de facto* prohibition on Tier 3 BESS within the Town, rendering the ordinance legally vulnerable under well-settled New York law and as inconsistent with State energy policy. We respectfully urge the Board to address the concerns below before taking further action as the Proposed Law is deficient in its current draft form. Moreover, currently there is an existing permitting pathway for the pending projects under the Utility Substation framework under the Town Code, as discussed further below.

I. State Policy and Legal Framework

New York State's Climate Leadership and Community Protection Act ("CLCPA") establishes binding statewide targets of 70% renewable electricity by 2030, a zero-emissions grid by 2040, and 6,000 MW of energy storage by 2030. Simply put, BESS is a major part of the utility infrastructure through which these statutory mandates will be met.

More fundamentally, New York law has long provided that a municipality may not use its zoning powers to exclude a public utility use, such as BESS, from the entire municipality or from every district in which the use could reasonably be located. The leading cases from the state's highest court and the Appellate Division on the topic, including

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Albany ■ Buffalo ■ Greensboro ■ New Jersey ■ New York ■ Palm Beach ■ Rochester ■ Saratoga Springs ■ Toronto

Consolidated Edison Co. of N.Y. v. Hoffman, 43 N.Y.2d 598 (1978); *Matter of New York Tel. Co. v. Town of Hempstead*, 115 A.D.2d 627 (2d Dep't 1985); and *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364 (1993), establish that such facilities are entitled to certain zoning entitlements and that a local ordinance which, by its operation, makes siting impossible or commercially impracticable is *ultra vires* and unenforceable. BESS falls into the category of public utility infrastructure defined under this line of authority, as these facilities interconnect to the regulated electricity transmission and distribution grid, are dispatched in support of utility service, and are integral to the public utility system.

An ordinance need not contain an express ban to run afoul of these principles. A cumulative set of zoning, setback, and locational requirements that, taken together, effectively leaves no parcel in the Town on which a compliant project can feasibly be sited has the same legal effect as an outright prohibition. Therefore, it is subject to invalidation on the same grounds.

II. Specific Concerns with the Proposed Law

A. Tier 3 BESS Limited to "Commercial Solar" Zoning Districts that do not Exist.

Proposed Law § 209-8 would permit Tier 3 BESS only in "Commercial Solar" zoning districts. The current Zoning Map, however, identifies no such district. Cross-referencing Local Law No. 1 of 2022 (Solar Energy Systems), Tier 3 solar is permitted in Industrial and Commercial zones. Therefore, the "Commercial Solar" classification appears to have been imported without conforming edits. The practical result is that Tier 3 BESS are not permitted in any zoning districts in the Town – the textbook definition of "zoning out" of a public use which is unlawful under *Hoffman* and its progeny. The provision should be revised to expressly permit Tier 3 BESS in Industrial and Commercial zoning districts, consistent with the Town's existing treatment of Tier 3 Solar.

B. Excessive and Categorical Setbacks.

Proposed Law § 209-8(L)(1)-(2) would require Tier 3 BESS to be set back at least 250 feet from all property lines, 500 feet from any "critical transportation infrastructure," and 750 feet from any occupied community building, disaster response facility, or combustible storage facility. A 250-foot property line setback, when applied uniformly across industrial and commercial parcels, would eliminate virtually every buildable site in Town. Aurora does not necessarily object to realistic, record-supported setback requirements from certain sensitive receptors, but these should be grounded in an honest assessment of the needs of fire and emergency response services. As drafted, these setbacks *de facto* render BESS siting impossible. Moreover, setback requirements are more vital in residential districts, but not so in commercial and industrial zones, where Aurora is proposing its projects and where the Town should allow such projects as these are more aligned with the character and uses of such districts.

C. Undefined "Wetland" Setback.

Proposed Law § 209-13(7) would prohibit Tier 3 BESS within 250 feet of "any wetland." However, the term "wetland" is undefined. If read to include every federal, state, and locally mapped wetland as well as unmapped hydrological features, this restriction would foreclose development on many commercial and industrial parcels in the Town far in excess of any regulatory standard proscribed by the federal and state agencies which exercise jurisdiction over these wetlands. We request that "wetland" be expressly defined (for example, by reference to Article 24 of the Environmental Conservation Law and the regulated wetlands identified by NYSDEC) and that the setback be measured using the standard regulated wetland boundary consistent with existing state and federal jurisdictional standards.

III. Cumulative Effect and Request for Revisions

Collectively, each of the three provisions above operate to effectively prohibit the development of Tier 3 BESS throughout the Town. Adoption of the Proposed Law in its current form would expose the Town to an Article 78 challenge under *Hoffman* and its progeny. It would also place otherwise viable projects, including Aurora's, at risk. Attached as **Exhibit A** are examples of the *de minimis* buildable area present on Aurora's proposed BESS sites throughout the Town with the proposed setbacks applied.

Aurora therefore respectfully requests that the Town Board consider the proposed revisions to the Proposed Law described above. Aurora and its technical team are available to meet with the Board, Town Attorney, and other municipal officials as necessary to walk through the Proposed Law as would be helpful to assist the Town in finalizing a defensible ordinance. Aurora's goal, like the Town's, is a local law that protects the community while allowing appropriately sited BESS projects to move forward consistent with the CLCPA and the state's energy policy and goals.

IV. Utility Substation Path for Existing Applications.

The Town Code already provides for Utility Substation siting. A "Utility Substation" is defined as

Land occupied by a building, structure or equipment used for private business or by a private or public utility service regulated by the NYS Public Service Commission or a federal agency in the transmission or collection of energy, water, or sanitary waste and may include communication towers, transmission poles and towers, cellular phone towers or antennas, pump stations, and equipment monitoring buildings. It excludes transmission facilities for public broadcasting use; offices for public benefit; vehicles, equipment and material storage; warehousing and similar functions.

Town Code § 230-11(C).

Supervisor Ulatowski
April 16, 2026
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BESS projects would fall under this definition. Utility Substations require a special use permit. Town Code § 230-27(I)(2)(e). The existing applications should proceed under this existing provision and then advance to site plan review under Town Code § 230-26(D).

Thank you for your consideration of this request. I ask that this letter be included in the public hearing record on the Proposed Law and welcome the opportunity to discuss this matter further with the Town.

Very truly yours,

A handwritten signature in cursive script that reads "Henry A. Zomerfeld".

Henry A. Zomerfeld

HAZ/mnb
Enclosures

With Enclosures

cc: Jill Hageman-Clark, Town Clerk (*via email: townclerk@townofclayny.gov*)
Chelsea Clark, Assistant to the Supervisor (*via email: cclark@townofclayny.gov*)
Michael N. Boncardo, Esq. (*via email*)
Sera Yoon, Esq. (*via email*)



Henry A. Zomerfeld
Partner
Direct Dial: 716.848.1370
HZomerfe@hodgsonruss.com

April 1, 2026

Via E-Mail (supervisor@townofclayny.gov) and Federal Express Overnight

Town of Clay Town Board
c/o Supervisor Damian M. Ulatowski
4401 State Route 31
Clay, New York 13041

Re: Proposed Local Law No. 4 of 2026
Moratorium on Battery Storage Systems

Dear Supervisor Ulatowski and Members of the Town Board:

This firm represents renewable energy developer Aurora Renewables Inc. and its subsidiaries and affiliates (“Aurora”). Aurora has several battery energy storage system (“BESS”) projects (the “Projects”) with applications currently pending in the Town of Clay (the “Town”). We understand that the Town Board is considering adopting a moratorium on applications and approvals for BESS in the Town (the “Moratorium”), which will be the subject of a forthcoming public hearing on Monday, April 6, 2026. Aurora submits this letter for inclusion in the public hearing record and respectfully requests that the Moratorium exclude Aurora’s Projects on the basis that completed applications for development have been submitted before the Moratorium’s effective date. The Projects pending are all going to be sited on industrial- or commercially-zoned parcels. To this end, the Town should exempt all such projects on industrial- or commercially-zoned parcels as these are the best suited sites for such Projects.¹

While the proposed text of the Moratorium has not been made available for Aurora’s review, it seems from the public hearing notice that the Moratorium contains no exceptions for BESS that currently have active applications before the Planning Board or other Town municipal bodies. The Projects were the result of the Town’s current regulatory framework. Aurora has expended significant resources towards development of the Projects in reliance of these standards, including initial landowner payments, substantial interconnection costs, extensive environmental studies, and other development costs. Aurora is invested in these Projects.

Additionally, Aurora’s selection of the proposed Project sites was conducted in light of the substantial logistical constraints typical of siting BESS projects. Aurora sited these Projects with care as BESS sites must be located near existing utility infrastructure—namely,

¹ Including, but not limited to, I-2 and HC-1 districts.

transmission lines and a substation—to interconnect the project to the utility grid. The Projects be sited in areas that do not impede on setbacks and buffers, areas of steep slopes, wetlands and wetland buffers, protected lands and critical habitats, sensitive historic or archeological areas. The property must also have a willing landowner as BESS projects are often sited on leased land, and it is exceedingly challenging to find a property owner willing to lease all or a portion of their property for BESS development. Here, the Project sites were carefully selected to meet the needs of a BESS project while simultaneously minimizing potential impacts to the community. The Moratorium will needlessly delay Aurora’s thoughtful and comprehensive development efforts, which were conducted in reliance on the Town’s existing regulatory scheme governing BESS.

As you may know, temporary moratoria adopted by New York State municipalities are subject to various requirements, including that such moratoria: (1) must be rationally related to, and formulated to advance a significant and valid public purpose; (2) cannot amount to a taking of property without just compensation; and (3) cannot interfere with vested rights of affected property owners. We do not believe the Moratorium meets these requirements based on relevant case law, as well as the State’s treatment of BESS as essential public utility infrastructure. *See, e.g., Cellular Telephone Co. v. Vill. of Tarrytown*, 209 A.D.2d 57 (2d Dep’t 1995) (moratorium must be rationally related to a legitimate public purpose).

We therefore ask that the Town decline to adopt the Moratorium, or otherwise modify its text to exempt all BESS projects that have submitted complete applications on or before the Moratorium’s effective date, including Aurora’s Projects. These actions would be consistent with the Climate Leadership and Community Protection Act’s (“CLCPA’s”) mandates regarding the State’s deployment of BESS and support the State mandated deployment goal of 6,000 MW (or 6 GW) of energy storage by 2030. With only 19% progress, the State currently has 502 MW of operational energy storage and 632 MW in the pipeline.² A massive increase in energy storage deployment will be needed over the next few years to meet this critical mandate. The only way the State can reach its clean, renewable energy goals is if there is a significant increase in energy storage projects like those proposed here.

The Town and State’s existing regulatory structure is robust, and more than sufficient to ensure that potential impacts posed by BESS to public health, safety, and welfare are addressed. Chiefly, the Projects will be permitted by the appropriate Town boards, which will conduct a comprehensive environmental review pursuant to the State Environmental Quality Review Act (“SEQRA”) and consider the Project applications and any related land use approvals. These boards retain the authority to condition their approvals to address any concerns associated with the Projects. The Projects will also be thoroughly reviewed by the New York State Energy Research and Development Authority (“NYSERDA”), which provides incentives for these Projects and mandates that BESS developers certify their projects meet minimum safety requirements by a Nationally Recognized Testing Laboratory; requires installation compliant with all manufacturers’ installation requirements, applicable laws, regulations, codes, licensing, and permit requirements (*e.g.*, the International Building Code Series as amended by the New

² See New York State Climate Act, <https://climate.ny.gov/Our-Impact/Our-Progress/Energy-Storage>.

Supervisor Ulatowski
April 1, 2026
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York State Uniform Code Supplement, the National Electric Code, the New York State Standard Interconnection Requirements and the utility's interconnection agreement, the applicable fire code, and all applicable State, city, town, or local ordinances or permit requirements); and requires all lithium-ion BESS projects sited outside of New York City to complete NYSERDA's Peer Review process, which includes a multi-step technical design review of the proposed BESS design.³ Further, the Projects will be an integral part of the electricity generation and transmission system, storing needed energy and distributing it to consumers through the electric grid—a utility in its own right, subject to significant public regulation. This multi-tiered system of regulation and safety review will ensure that the Projects are incorporated safely and mindfully into the Town of Clay.

Thank you for your consideration of this request. I ask that this letter be included in the public hearing record on the Moratorium and welcome the opportunity to discuss this matter further with the Town.

Very truly yours,

A handwritten signature in black ink that reads "Henry A. Zomerfeld". The signature is written in a cursive style with a large initial "H" and "Z".

Henry A. Zomerfeld

HAZ/mnb

cc: Jill Hageman-Clark, Town Clerk (via email: townclerk@townofclayny.gov)

³ See NYSERDA Bulk Energy Storage Program, *Program Manual* (June 2025).

Addendum

Anticipated Projects

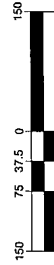
1. Steelway Boulevard
2. 4 Lumber Way
3. 5 Lumber Way
4. Buckley Road
5. Wetzell Road
6. 7175 Buckley Road * Application forthcoming

Exhibit A



NOTES

1. ALL LAND DEPICTED IS WITHIN AN INDUSTRIAL ZONING DISTRICT.
2. SUBJECT PARCEL AREA = 7.2 ACRES
3. BUILDABLE AREA SHOWN ON SUBJECT PARCEL IS BASED ON MINIMUM PROPERTY LINE SETBACK (250 FEET) PROPOSED IN TOWN OF CLAY BATTERY ENERGY STORAGE SYSTEM LAW.



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POTENTIAL PROJECT EXHIBIT

**4 LUMBER WAY
CLAY, NEW YORK**

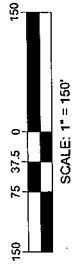
BOHLER
BOHLER, JAMES, LICENSED PROFESSIONAL ENGINEER AND SURVEYOR IN N.Y. & ILL.
 70 LINDEN OAKS, THIRD FLOOR
 ROCHESTER, NY 14625
 Phone: (262) 688-1100
www.BohlerEngineering.com



NOTES

1. ALL LAND DEPICTED IS WITHIN AN INDUSTRIAL ZONING DISTRICT.
2. SUBJECT PARCEL AREA = 4.5 ACRES
3. NO BUILDABLE AREA AVAILABLE ON SUBJECT PARCEL BASED ON MINIMUM PROPERTY LINE SETBACK (250 FEET) PROPOSED IN TOWN OF CLAY BATTERY ENERGY STORAGE SYSTEM LAW.

04/14/2016 10:01 AM | MAC3504.09 | Rev. 0a



POTENTIAL PROJECT EXHIBIT

**5 LUMBER WAY
CLAY, NEW YORK**

BOHLER
BOHLER ENGINEERING, INC. A PROFESSIONAL CORPORATION
 70 LINDEN LANE, THIRD FLOOR
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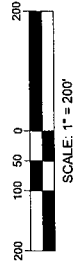


NOTES

1. ALL LAND DEPICTED IS WITHIN AN INDUSTRIAL ZONING DISTRICT.
2. SUBJECT PARCEL AREA = 10.4 ACRES
3. NO BUILDABLE AREA AVAILABLE ON SUBJECT PARCEL BASED ON MINIMUM PROPERTY LINE SETBACK (250 FEET) PROPOSED IN TOWN OF CLAY BATTERY ENERGY STORAGE SYSTEM LAW.

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POTENTIAL PROJECT EXHIBIT
 STEELWAY BLVD S
 CLAY, NEW YORK



04/14/2016 | JGM | MAA20003.00 | Rev 04



Carson Power LLC
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Suite 2401
New York, NY 10038
www.carson-power.com

Town of Clay Town Board
Planning and Development
4401 Route 31
Clay, New York 13041

RE: Comments on Proposed Local Law No. 4 of 2026 (Battery Energy Storage Systems)

Dear Supervisor Ulatowski and Town of Clay Town Board Members,

Carson Power LLC, applicant for Wetzel BESS A&B (Case No. 1245), respectfully submits the following comments on Local Law No. 4 of 2026 (Town of Clay Battery Energy Storage System Law). As currently drafted, several provisions of the law would preclude the Wetzel BESS A&B project from continuing the Town's permitting process and prevent the project from being developed, despite its location within an Industrial zoning district appropriate for this type of infrastructure and its ability to meet the Town's stated objectives for responsible siting. As a result, the Wetzel BESS A&B project will not be able to comply with the ordinance if these provisions are not modified. These comments are provided to assist the Town Board in adopting a BESS law that effectively addresses community interests, supports responsible siting, and is consistent with established technical standards, regulatory frameworks, and real-world operating data.

These comments are organized into two sections. **Part 1, Key Issues and Requested Revisions**, identifies the primary areas of concern that directly impact project feasibility and provides targeted revisions to specific provisions of the draft law. This section is intended to highlight the most consequential elements of the law and offers precise, code-ready language for consideration. **Part 2, Additional Considerations and Recommendations**, addresses other provisions of the draft law and broader topics for consideration, providing context, clarification, and alignment with industry standards and best practices.

Part 1. Key Issues and Recommended Revisions

Section 209-8 – Permitted Districts (Page 10)

Existing Language: *Tier 3 battery energy storage systems shall be permitted in Commercial Solar*

zoning districts only, are subject to a battery energy storage system permit, are subject to site plan review, and require a special use permit issued by the Town Board.

Recommended Revision: Tier 3 battery energy storage systems shall be permitted in Industrial zoning districts, including I-1 and I-2, subject to Special Use Permit issuance by the Town Board and site plan review and approval by the Planning Board.

Justification: “Commercial Solar” zoning districts are not defined in the Town Code or depicted on the Town’s zoning map, creating ambiguity and effectively precluding siting within the Town’s established zoning framework. Battery energy storage systems function as utility infrastructure and are most appropriately sited in industrial zoning districts due to access to electrical infrastructure and existing development patterns. The Town’s Industrial zoning districts, including I-1 and I-2, provide appropriate locations for such systems consistent with the Town’s established land use framework.

Section 209-8(J)(3) – Decommissioning Plan (Page 14)

Existing Language: *The Town at its option may obtain its own decommissioning plan, the cost of which shall be borne by the applicant.*

Recommended Revision: (3) The applicant shall submit a decommissioning plan and cost estimate for review by the Town. The Town shall retain independent consultants, at the applicant’s expense, to review the decommissioning plan and cost estimate and provide recommendations to the Town.

Justification: Section 209-8(J) currently allows the Town to prepare a separate decommissioning plan at the applicant’s expense. The applicant, as the designer and operator of the project, is best positioned to prepare a complete and technically accurate decommissioning plan and cost estimate. That plan should form the basis for review by the Town and its independent consultants, who are responsible for evaluating its adequacy and requiring revisions as necessary. Using a single, applicant-prepared plan ensures that all parties are working from the same document, with a clear obligation for it to be complete, accurate, and sufficient to support project approval. Requiring multiple plans introduces potential inconsistencies and ambiguity without improving the quality of the review, whereas a single plan subject to independent review provides clarity, accountability, and an efficient basis for establishing the decommissioning cost estimate.

Section 209-8(J)(4)(a)–(b) – Financial Security Structure (Pages 14–15)

Existing Language (summary):

(a) Requires a minimum of 50% of the decommissioning cost to be posted in cash, with phased conversion of remaining security to cash over time and establishes that the security amount is set by the Town Engineer or Attorney, including a 30% contingency and other factors.

(b) Provides for forfeiture of cash and/or letter of credit in the event of default and allows the Town to maintain an action thereon.

Recommended Revision:

(a) The applicant shall provide financial assurance in an amount equal to the decommissioning cost estimate as established through the approved decommissioning plan, following review by the Town and its independent consultants. Such financial assurance shall be provided in a form acceptable to the Town, including but not limited to a bond, letter of credit, or other comparable financial security instrument.

(b) The financial assurance shall remain in effect and be subject to periodic review until decommissioning and site restoration are completed in accordance with the approved decommissioning plan. In the event of default, and following notice and expiration of any applicable cure period, the Town may draw upon such financial assurance to complete decommissioning and restoration of the site in accordance with the approved plan.

Justification: The current provisions require a prescriptive financial structure, including a mandatory cash component, phased conversion requirements, and cost determinations established independently of the project-specific decommissioning plan, including a fixed contingency. These requirements are not tied to the actual scope of decommissioning and may result in overestimation or inefficiencies without providing additional, measurable protection to the Town of Clay. Decommissioning costs should be derived from the applicant-prepared decommissioning plan, which is reviewed by the Town and its independent consultants to ensure adequacy. Establishing financial assurance based on this peer-reviewed plan ties the required amount directly to project-specific decommissioning obligations. Periodic review of the cost estimate accounts for changes over time and ensures the financial assurance remains sufficient. This approach maintains full protection for the Town by ensuring sufficient funds are available to complete decommissioning and restoration, while providing a clear and technically supported basis for determining the required financial assurance. Many municipalities utilize surety bonds or letters of credit rather than cash-based security, as these instruments provide more efficient access to funds through established surety providers and avoid the administrative burden associated with managing escrowed cash accounts.

Section 209-8(K)(1) – System Owner’s Representative (Page 15)

Existing Language: *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. For the purposes of this provision, emergencies include but are not limited to fire, explosions, smoke, leakage, excessive noise, and requests for medical assistance.*

Recommended Revision: The system owner or operator shall ensure that a qualified representative is available to coordinate with emergency responders in accordance with the response time requirements established by the New York State Uniform Fire Prevention and Building Code. A representative shall be available by telephone within fifteen (15) minutes and shall be available to be on-site within the timeframe required by applicable state code.

Justification: The current provision requires an on-site response within one hour for a broad range of events defined as emergencies, including conditions that may not involve BESS operations. Battery energy storage systems are subject to the New York State Uniform Fire Prevention and Building Code, which establishes response time expectations and emergency coordination requirements based on system design and risk. The New York State Fire Safety Working Group further recommends response standards of 15-minute remote availability and on-site response within four hours, among the most stringent applied nationally. Aligning the Town's requirements with these established standards ensures consistency with applicable regulatory frameworks while maintaining appropriate emergency response capabilities and avoiding additional local requirements that may not be proportional to system risk.

Section 209-8(L) – Setbacks (Page 16)

Existing Language: *Setbacks. All Tier 3 battery energy storage systems shall be set back at least 250 feet from all property lines. (1) There shall be a clearance of a minimum of 750 feet from any occupied community building, disaster response facility, combustible storage facility, or other similarly sensitive location. (2) There shall be a clearance of a minimum of 500 feet from any critical transportation infrastructure.*

Recommended Revision: Setbacks. Tier 3 battery energy storage systems sited in Industrial zoning districts, including I-1 and I-2, shall comply with the minimum setback requirements of the underlying zoning district. Where a project site shares a property boundary with a parcel located in a non-industrial zoning district, the Town Board may require increased setbacks from that shared boundary as part of the Special Use Permit review. Additional setbacks may be applied where a project site is located within the 500-foot Industrial Perimeter defined in the Town of Clay Official Zoning Map (2018).

Justification: Section 209-8(L) imposes uniform setbacks without regard to zoning district or surrounding land use context. These requirements are more restrictive than those applied to comparable industrial and utility uses and would effectively preclude otherwise suitable BESS development in Industrial zoning districts. In these districts, where similar uses are routinely permitted, such setbacks are inconsistent with the Town's land use framework. The cumulative effect increases minimum parcel size requirements and limits siting flexibility, particularly given the relatively small footprint of BESS facilities, which are well-suited to co-location with existing

industrial development. The required 250-foot setback from all property lines results in a minimum parcel size of roughly 8 acres or more to accommodate a typical 5 MW facility. By contrast, New York State's model BESS law applies setbacks consistent with the underlying zoning district, and the New York State Fire Code requires only a 10-foot setback between equipment and combustible materials. A more targeted approach that accounts for adjacent land uses and zoning districts would provide a more consistent and predictable standard.

Section 209-9(A)(5) – Site Plan Application Requirements (Project Parties) (Page 18)

Existing Language: *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;*

Recommended Revision: Name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the batter energy storage system shall be submitted prior to the issuance of a building permit.

Justification: Identification of the system installer and owner/operator at the time of initial application is not feasible, as these relationships are typically finalized later in the development process following permitting approvals. Requiring this information at the application stage does not reflect standard industry practice and may delay project review without providing meaningful benefit to the Town. The requirement should be modified to allow submission of this information at a stage when it is known.

Section 209-9(A)(13)(a)(i) –Water Supply Requirements (Page 20)

Existing Language (summary): Section 209-9(A)(13)(a)(i) requires detailed analysis of available water supply for fire suppression systems, including a requirement for a minimum of two (2) external fire hose streams.

Recommended Revision: Fire safety design, hazard mitigation analysis, and emergency response planning shall be prepared in coordination with local emergency responders and shall comply with the requirements of the New York State Uniform Fire Prevention and Building Code and applicable NFPA standards, including UL 9540 and UL 9540A testing protocols.

Justification: Fire safety professionals do not rely on water-based suppression as a primary response strategy for thermal events in battery energy storage systems. The current provision requires a prescriptive approach to water-based fire suppression, including a minimum number of external hose streams, which is not consistent with established fire response practices for these systems. Fire response strategies for BESS are governed by the New York State Uniform Fire Prevention and Building Code and supporting standards, which evaluate system behavior under

thermal conditions and inform appropriate mitigation measures. These standards do not require fixed water supply thresholds and recognize that application of water may not be appropriate in all scenarios. Requiring coordination with the local fire department and compliance with applicable codes ensures that fire response planning is based on site-specific conditions and consistent with established safety practices.

Section 209-9(A)(13)(a)(vi) – Backup Power Requirements (Page 21)

Existing Language (summary): Section 209-9(A)(13)(a)(vi) contemplates requiring a natural gas or propane generator to operate cooling systems or critical components in the event of a grid outage.

Recommended Revision: Backup power requirements, if any, shall be determined based on system design and in accordance with the New York State Uniform Fire Prevention and Building Code and applicable NFPA standards.

Justification: The current provision introduces ambiguity as to whether the requirement is intended to provide backup power for cooling systems or to supply generation to the grid. Either interpretation is inconsistent with the design and operation of battery energy storage systems, which are designed to safely cease operation under loss-of-grid conditions. Battery energy storage systems do not require continuous operation of cooling systems during outages, and the addition of fuel-based generation is not a standard requirement and may introduce additional risk without a corresponding safety benefit. Deferring to system design and applicable codes ensures that any backup power requirements are based on demonstrated need and consistent with established safety standards.

Section 209-13 – Additional Environmental Regulations (Page 25)

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

Recommended Revision: A. Avoidance Areas. Battery energy storage systems shall avoid the following areas to the maximum extent practicable:

Justification: Environmental impacts associated with battery energy storage systems are appropriately evaluated on a case-by-case basis through the State Environmental Quality Review Act (SEQRA) process. Absolute prohibitions may unnecessarily restrict development in otherwise suitable locations and do not allow for consideration of site-specific conditions, mitigation measures, or design alternatives. A “maximum extent practicable” standard maintains environmental protection while allowing the Town Board to evaluate each project based on its specific characteristics.

Existing Language: (2) *Open Space*

Recommended Revision: (2) Open Space, as defined by the Town Code, within zoning districts where preservation of undeveloped land is a primary planning objective;

Justification: “Open space” is not currently defined and may be applied inconsistently. In addition, preservation of undeveloped land is not the primary intent of Industrial zoning districts, where development is anticipated. Clarifying and limiting this provision ensures it is applied only in appropriate zoning contexts.

Existing Language: (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;*

Recommended Revision: (3) On parcels containing prime agricultural soils that are in active agricultural use, provided that battery energy storage systems may be located on portions of the parcel not in active agricultural use;

Justification: Applying restrictions based solely on soil classification may unnecessarily remove otherwise developable land from use, particularly in Industrial zoning districts where development is expected. Limiting this provision to actively farmed land ensures that agricultural resources are protected while maintaining consistency with the intended use of Industrial districts.

Existing Language: *Within 250 feet of any wetland in the case of a Tier 2 or 3 system or within 100 feet of any wetland in the case of a Tier 1 system;*

Recommended Revision: (4) Within wetlands or adjacent areas subject to jurisdiction by the New York State Department of Environmental Conservation or the U.S. Army Corps of Engineers, except where permitted in accordance with applicable regulations;

Justification: Wetland setback requirements in the draft law are not consistent with those established by NYSDEC and the U.S. Army Corps of Engineers and may apply to features that are not jurisdictionally regulated. Utilizing established state and federal regulatory frameworks ensures consistent, technically supported review while avoiding redundant or conflicting requirements.

Section 209-13(B) – Cooling System Requirements (Page 26)

Existing Language: Battery energy storage systems that utilize ethylene glycol or similar hazardous materials in cooling systems shall include a secondary containment system and provide an approved off-site disposal plan for such materials.

Recommended Revision: Cooling systems for battery energy storage systems shall be designed, installed, and operated in accordance with manufacturer specifications and the requirements of the New York State Uniform Fire Prevention and Building Code and applicable standards.

Justification:

The current provision requires secondary containment for cooling systems utilizing ethylene glycol, which is not consistent with standard battery energy storage system design or applicable codes. Many systems utilize closed-loop cooling systems that are engineered, tested, and certified as part of the overall system design, including through UL 9540A testing. These systems are designed to safely contain and manage cooling fluids without the need for additional external containment. Requiring secondary containment conflicts with manufacturer specifications and installation requirements and could void system warranties or certifications. Deferring to manufacturer design and applicable state code ensures that cooling systems are implemented as tested and certified, while maintaining appropriate environmental and safety protections.

Part 2. Additional Considerations and Recommended Revisions

Section 209-2 – Statement of Purpose and Findings (Page 2)

Section 209-2 includes findings related to safety, noise, environmental impacts, and system risks that are not fully supported by current technical standards, regulatory frameworks, or operating data. While the Town's intent to protect public health and safety is appropriate, several statements—such as those related to infrasound, electromagnetic interference, and generalized risk characterization—do not reflect the performance of modern battery energy storage systems operating under established standards, including the New York State Uniform Fire Prevention and Building Code and UL 9540A testing. Overstating risk in the findings section may lead to regulatory provisions that are not proportionate to actual conditions or consistent with other regulated uses.

Recommended Revision: The findings section should be revised to reflect established technical standards, regulatory oversight, and current industry data, and should avoid unsupported or generalized statements that are not specific to modern battery energy storage systems. Revise §209-2 to remove or modify statements that are not supported by current regulatory guidance or industry data and incorporate language recognizing that battery energy storage systems are subject to comprehensive state and national safety standards, including the New York State Uniform Code and applicable UL and NFPA standards.

Section 209-8(E)(1)(c) – Signage and Fire Suppression References (Page 12)

Section 209-8(E)(1)(c) requires signage identifying the type of fire suppression system installed,

which may imply that traditional fire suppression systems are required for all installations. Fire protection strategies for battery energy storage systems are determined through system design and certification processes, including UL 9540A testing, and vary by manufacturer and technology. Some systems are specifically designed to operate safely without traditional fire suppression systems, and prescriptive assumptions regarding suppression may conflict with certified system designs.

Recommended Revision: The law should clarify that fire protection measures are to be determined based on system design and applicable code requirements rather than implying a uniform approach. Revise §209-8(E)(1)(c) to read: “A description of any fire protection or suppression system installed, if applicable, consistent with the system design and requirements of the New York State Uniform Fire Prevention and Building Code.”

(Section 209-9(A)(9)) – Fire Safety Documentation (Page 19)

Section 209-9(A)(9) requires a separate fire safety compliance plan in addition to other required safety documentation. Fire safety considerations are already addressed through the Emergency Operations Plan and Hazard Mitigation Analysis required elsewhere in the law. Requiring an additional standalone deliverable introduces redundancy without adding substantive value.

Recommended Revision: The law should consolidate fire safety documentation requirements to avoid duplication. Revise §209-9(A)(9) to read: “Fire safety requirements shall be addressed through the Emergency Operations Plan and Hazard Mitigation Analysis required under this section.”

Section 209-9(A)(14) – Traffic and Circulation Requirements (Page 22)

Section 209-9(A)(14) requires a traffic safety circulation plan without distinguishing between construction and operational phases. Battery energy storage systems generate minimal traffic during normal operations, with traffic impacts primarily occurring during construction. Standard practice is to demonstrate adequate site access for construction vehicles and emergency responders.

Recommended Revision: The requirement should be clarified to reflect the limited operational traffic associated with BESS facilities and focus on relevant phases of development. Revise §209-9(A)(14) to read: “A traffic and access plan shall be provided demonstrating safe access for construction vehicles and emergency responders prior to building permit issuance. Additional traffic analysis may be required during construction based on site-specific conditions.”

Section 209-9(A)(15) – Discretionary Requirements (Page 22)

Section 209-9(A)(15) allows the Planning Board to require “any other procedure or measure” without defined limits. While flexibility in review is appropriate, open-ended requirements may create uncertainty and inconsistent application.

Recommended Revision: The provision should be clarified to ensure that additional requirements are directly related to project impacts and consistent with applicable standards. Revise §209-9(A)(15) to read: “Additional requirements may be imposed where reasonably necessary to address site-specific impacts, provided such requirements are directly related to the proposed use and consistent with applicable laws, codes, and standards.”

Section 209-9(F)(1)(d) – Utility Mapping Requirements (Page 24)

Section 209-9(F)(1)(d) requires mapping of utility lines within 1,200 feet without clear scope or purpose. It is unclear whether this requirement applies to all utility infrastructure in the area or only to interconnection facilities, which may create unnecessary burden without design relevance.

Recommended Revision: The requirement should be clarified and limited to relevant interconnection infrastructure. Revise §209-9(F)(1)(d) to read: “Location of utility infrastructure necessary for interconnection of the system, including the point of interconnection and associated facilities.”

Section 209-9(F)(1)(h) – Stormwater Requirements (Page 24)

Section 209-9(F)(1)(h) requires a Stormwater Pollution Prevention Plan (SWPPP) regardless of project size. SWPPP requirements are established by NYSDEC and apply only when specific disturbance thresholds are met.

Recommended Revision: The requirement should be deferred to NYSDEC thresholds. Revise §209-9(F)(1)(h) to read: “Stormwater management and erosion control plans shall be provided in accordance with applicable NYSDEC requirements. Where a SWPPP is not required, an erosion and sediment control plan shall be provided.”

Carson Power respectfully recommends that the Town revise the proposed law to better align with established state codes, industry standards, and real-world operating data. Doing so will ensure that public safety objectives are met while avoiding restrictions that may preclude responsible BESS development within the Town. Carson Power respectfully requests that the Town Board consider the recommended revisions so that the Wetzel BESS A&B project may continue the permitting process initiated in January 2026 and have the opportunity to demonstrate the project’s benefits to the Town of Clay and the surrounding community, as well as its safety and reliability. Carson Power remains available as a resource to the Town Board, other Town boards, and staff

should there be any questions regarding the information contained in this letter.

Respectfully submitted,



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Carson Power



Emily Thomas

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Carson Power



**Nexamp Comment Response Letter
To the Town of Clay on Proposed Local Law No.4 2026**

Town Board and Planning Board

Town of Clay

Clay, New York

Re: Local Law No 4 of the year of 2026

Dear Members of the Town Board:

On behalf of Nexamp we respectfully submit the following comments in response to the proposed Local Law No 4 of the year of 2026 which would be used to create a new Town Code Chapter 209 titles "Town of Clay Battery Energy Storage System Law". We appreciate the Town's urgency to propose language to regulate BESS technology and the shared goal for an expeditious return to the permitting process.

Nexamp has been in the commercial battery energy space for over 7 years. As a vertically integrated company Nexamp has unique insight as to how battery systems are permitted, constructed, and operated with feasibility and long term sustainability at the forefront of all our decision making. We hope to be a long term partner to the town of Clay and look forward to the opportunity to work together on finalizing a battery code that balances the needs of all parties.

§209-2 Statement of Purpose and Findings

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 roadsides and can harm farmland and wetlands through improper construction methods;

The potential for erosion, sedimentation, and drainage impacts is not specific to battery energy storage systems, but rather is a standard consideration for any land development project involving site disturbance. These risks are well understood and routinely managed through established regulatory frameworks and engineering best practices.

Nexamp suggests updating this language to say " As with any land development project, construction activities associated with battery energy storage systems must implement appropriate erosion and sediment control measures to prevent impacts to drainage, farmland, and wetlands, in accordance with applicable state and federal regulations."

E. Battery energy storage systems, when improperly sited, are known to adversely affect property values and cause economic hardship to property owners

As of writing this comment letter there are no studies that show property values near commercial BESS projects are negatively impacted. In the May 2025 research paper “The Impact of Utility-scale Battery Energy Storage System Projects on Property Values in California, Massachusetts, and New York By Yixin Gwee” properties around 178 utility scale BESS projects throughout New York, Massachusetts, and California were reviewed for changes in property value via sales since the installation of a 5MW AC or larger BESS system. The study concluded there was no statistically relevant effect on property values of those properties near Battery Energy Storage Systems.

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;

Regulatory bodies (e.g., WHO, EPA frameworks) do not identify BESS as an infrasound concern. Noise from battery energy systems is well understood, predictable, and routinely mitigated to comply with local sound standards, ensuring no adverse impact on nearby residents.

H. Battery energy storage systems have the potential to cause electromagnetic interference with various types of communications

The levels of EMF associated with commercial scale batteries are required to meet stringent federal and industry standards that limit emissions and prevent interference with communications systems.

K. (3) The actual necessity for such facility given energy production in the area and region, including but not limited to clean energy production;

Clarification on how necessity is determined will be needed to address this provision thoroughly in an application. Statewide there are energy storage installation goals that are applicable to all large electric utility companies, therefore the necessity is statewide. Additionally, battery energy storage systems provide local distribution benefits to the electric grid regardless of location.

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

In aligning with the town of Clay’s interest to have a functional BESS code upon approval of Local Law 4, Nexamp recommends Tier 3 energy storage systems be permitted by battery energy storage system permit in both the I-1 and I-2 zones and the language pertaining to the “Commercial Solar zoning district” be removed from the code. When reviewing the

current Cicero code, of which this draft language is based on, there is still no zoning map with a "Commercial Solar" zoning district published and the language regarding how the "Commercial Solar" zoning district would be determined and implemented is inconclusive. To alleviate the town of Clay, and developers alike, from a laborious re-zoning process we recommend existing zones be used in defining Tier 2 and 3 BESS development areas. The inclusion of the setback and prohibited siting areas framework already present in the proposed code language accomplishes the town's objectives of having tight control over commercial battery siting.

§209-8 J. Decommissioning (3) -The Town at its option may obtain its own decommissioning plan, the cost of which shall be borne by the applicant.

Nexamp advises against the provision allowing the town to obtain its own decommissioning plan given the decommissioning plan provided to the Boards as part of the BESS application package will be required to undergo 3rd party review and updated accordingly based on the town's retained engineer's comments. The instructions for an acceptable decommissioning plan, contained within the proposed code, in combination with the document review and editing as part of the permitting process leaves no reasoning for the town to commission a decommissioning plan. Plans unacceptable to the town should simply be required to meet the town's standards upon receipt of comments or risk the project's permit approval.

§209-8 J. Decommissioning (4) - Town of Clay will require the posting of a cash component of no less than 50% of the total security amount determined

This portion of the code taken from Cicero is simply a method to create a cost prohibition. Considering no other uses in the town of Clay are required to post a decommissioning surety, aside from solar, we respectfully ask this provision is re-written to align with industry standard surety posting.

§209-8 K. (1) System Owner's Representative

We ask the town update this portion of the code to reflect the state standards set in 2025 FCNYS section 1207.1.8.1 which pertains to timing requirements for BESS owner representatives to be on site in response to an emergency.

§209-8 L. Setbacks

The implementation of a blanket 250ft setback from all property lines for all Tier 3 battery energy storage systems greatly reduces the ability for BESS development on those parcels which would have the most to benefit from housing these systems. The landowners most interested in having BESS as a use on their property, and those with the most to gain, are those with parcels whose dimension do not lend themselves to larger scale development. A 250ft setback from all property lines creates a minimum parcel size of approximately 6 acres for a Tier 3 BESS to be sited. This 6 acre threshold would also only apply to parcels

shaped uniformly square, any change in dimensions exponentially increases the amount of space needed to meet this setback requirement.

When reviewing the properties in Clay within the I-1 and I-2 zones, not including those dedicated to Micron development or being preserved by the town or county, only a small handful would be able to meet the 250ft parcel line setbacks. For the properties sizable enough and shaped appropriately to meet the setback the BESS would be required to be built directly in the middle of the property, an area which is often already developed or would be more preferably developed for another use. Once additional siting requirements are added to the parcel boundary setback equation the amount of suitable BESS sites within the I-1 and I-2 zones combined, not accounting for utility interconnection feasibility, would be in the low single digits.

An approach that accomplishes the underlying reasoning for this setback without excessively limiting BESS development would be to create a building setback from the batteries themselves to the nearest building while maintaining the underlying zoning districts yard setbacks. This approach would allow BESS to be sited on those underutilized properties that would now bring income to the property owner and the town while also maintaining an overall appeal to fire safety.

It is well documented that the state and federal guidance for distance to be maintained during an emergency event for personnel is 100ft, so we recommend a 100ft building setback requirement rather than a BESS specific parcel boundary line setback. 2025 FCNYS Section 1208.8.3 prescribes a 10-foot setback from various exposures including lot lines and combustible materials, 100 feet from all buildings is a cautious and achievable standard.

A consideration to be taken into account when creating parcel boundary setbacks would be to apply the strictest setback requirements for those Tier 3 BESS that are larger than 5 MW AC of output capacity. Such bulk storage systems are often magnitudes larger than the BESS projects of 5 MW AC or less that are interconnecting to the distribution grid and participating in the NYSERDA Commercial Storage program. Bulk storage projects should be sited on properties that can reasonably support a 250ft parcel boundary line setback.

§209-9 Site Plan Application (8) Commissioning Plan

We ask the board consider allowing commissioning to be done by a qualified design professional acceptable to the Code Enforcement Officer and Fire Code official in accordance with 2025 FCNYS 1207.2.1

§209-9 Site Plan Application (13) a. i. Hazard Mitigation Analysis

We ask the amount of fire hose streams and their proximity to the site be governed by the 2025 New York State Fire Code and approved by the discretion of the local Fire Code Official.

§209-9 Site Plan Application C. Height

Certain top of the line American made utility scale batteries such as Fluence are ~16ft in height. We recommend increasing the height limit or allowing some flexibility to encourage the use of the best available technologies.

§209-13 Additional Environmental Regulations A. (7) Wetland Setbacks

We ask the board consider updating this provision to apply only to DEC jurisdictional wetlands of the size 7.4 acres or larger in order to maintain the benefits associated with large state wetlands while still allowing the SEQR and wetland permitting process to act as the intended safe guards to environmental risk. State regulations automatically give DEC jurisdiction to all wetlands within Clay which creates a 100ft development setback from all wetlands in the municipality. Under certain circumstances the DEC will occasionally grant permits to build within wetland buffers, and even more rarely within wetlands, once the project and its mitigation plan have been closely scrutinized and no negative impacts are determined by the DEC. Often these permits are granted to projects proposed on previously disturbed land or industrial areas. Additionally, the pervasiveness of wetland vegetation in the town can often automatically result in an affirmative DEC wetland determination regardless of soil hydrology. As such we ask the stricter 250ft setback be reserved for those larger wetlands which have been shown to provide ecological benefits and for state and federal wetland jurisdiction and permitting processes be used for previously disturbed or industrially sited parcel.

I appreciate the chance to provide comment on Clay's proposed battery energy storage code. While the thoroughness of the proposed language is a great starting point for the code that will be adopted I have concerns that the intention of the parent code's language was primarily to act as a nearly insurmountable barrier to entry for battery energy storage projects. Quoting the approving Town Supervisor of Cicero "this BESS code is the strictest in the state." Based on my discussions with the Clay town boards, fire department, and residents the goal of creating a BESS code is not to ban these systems from the town but to comprehensively regulate their development by reasonable means. Clay, with its projected growth in all aspects of civic life, is uniquely positioned to have outsized advantages from a robust adoption and integration of battery energy storage onto its grid and the code should be drafted with these factors in mind.

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Business Development Manager

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