RESOLUTION 2026-22

A Resolution of the Board of County Commissioners of Leavenworth County, Kansas amending Articles 18 and 19 of the 2006 Leavenworth County Zoning and Subdivision Regulations to add standards for Battery Energy Storage Systems (Case No. DEV-26-100).

WHEREAS, the Leavenworth County Planning Commission, after notice as required by law, held a public hearing on October 14, 2026 on proposed amendments to Articles 18 and 19 of the 2006 Leavenworth County Zoning and Subdivision Regulations in Case No. DEV-26-100; and

WHEREAS, the Planning Commission, based on specific findings of fact incorporated by reference, recommended approval of the amendments by a vote of 7-0; and

WHEREAS, the Board of County Commissioners considered the recommendation of the Planning Commission in regular session on October 21, 2026.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Leavenworth County, Kansas:

Section 1. Adoption of Recommendation. The Board adopts the recommendation and findings of fact of the Planning Commission in Case No. DEV-26-100.

Section 2. Amendment of Article 18. Article 18, Planned Zoning Districts, of the 2006 Leavenworth County Zoning and Subdivision Regulations is amended by adding Section 6.6, Battery Energy Storage Systems, as set out in Exhibit A, which is attached and incorporated by reference.

Section 3. Amendment of Article 19. Article 19, Table of Uses, of the 2006 Leavenworth County Zoning and Subdivision Regulations is amended by adding the following use:

	RR-2.5/5	R-1/2/3/4	B-1	B-2	B-3	I-1	I-2	I-3	PR-1/2/3	MXD	PC	PI	PITD
	Rural	1/2 Fam Apt	Neigh Bus	Lim Bus	Gen Bus	Lim Ind	Lite Ind	Hvy Ind	Plnd Res Dis	Mixed	Plnd Comm	Plnd Ind	Plnd Ind Tech
Battery Energy Storage Systems	S		S	S	S	S	S	S		S	S	S	S

Section 4. Effective date. This resolution takes effect upon publication in the official county newspaper.

Adopted this 21st day of October, 2026
Board of County Commission
Leavenworth, County, Kansas

Mike Smith, Chairman

ATTEST

Fran Keppler

Jeff Culbertson, Member

Vanessa Reid, Member

Willie Dove, Member

Mike Stieben, Member

Exhibit A

Article 18 – Planned Zoning Districts

Section 6.6 Battery Energy Storage Systems

A. Intent

1. These criteria are intended to address potential issues associated with Battery Energy Storage Systems (BESS). As potential issues vary with the size of the BESS, such BESS are categorized herein as Tier 1, Tier 2, or Tier 3.

2. Tier 1 BESS shall be permitted as an accessory use, which does not require a special use permit (SUP) or a development plan, but may require approval.

3. Tier 2 or Tier 3 BESS shall be permitted only under an SUP and development plan.

    a. Such Tier 2 and Tier 3 BESS shall submit to a development plan process, either on a standalone basis or as part of a broader project for which BESS is an accessory use.

    b. A preliminary development plan shall be submitted as part of the SUP application process.

    c. Final development plans that are in general conformance with the approved SUP and preliminary development plan (PDP) shall be administratively approved prior to the issuance of the building permit.

    d. Additional issues not listed in the SUP and PDP may emerge and be deemed significant due to studies, public input, or other issues raised during County review. The final development plans shall address such issues.

4. Any BESS for which a development plan is required shall also require a development agreement. All pre development and development agreements between the developer and/or applicant and the County shall be written, accepted and executed by the Board of County Commissioners before any final administrative or County Commission action can be granted to include any construction phase or permitting. Each agreement may include phasing, public and private infrastructure obligations, third-party review and inspection reimbursement, monitoring and reporting, performance standards, financial security, default, cure, suspension, revocation, withholding of permits or certificates of occupancy, indemnity, and other remedies reasonably related to the approved development.

5. County approval under these criteria and standards is for land use, development-plan, and local safety approval only. County approval does not authorize interconnection, energization, market participation, utility service, wholesale sales, retail sales, transmission service, or compliance with any other non-County federal, state, or local law, regulation, or requirement.

B. Definitions

1. **BATTERY ENERGY STORAGE SYSTEM (BESS)** — Battery Energy Storage System or BESS means one or more batteries and associated devices, facilities, buildings, containers, modules, inverters, transformers, controls, safety systems, collection lines, communication

equipment, access roads, and other associated equipment assembled or used together to receive, store, manage, and discharge electrical energy for later use or delivery. A BESS is classified as Tier 1, Tier 2, or Tier 3. A BESS does not include batteries that are installed in, packaged with, or used solely to power consumer products, household appliances, power tools, lawn and garden equipment, personal electronics, medical devices, telecommunications equipment, other portable devices, motor vehicles, mobility devices, lawn equipment, construction equipment, or similar devices, provided that such batteries are used in the ordinary manner intended by the manufacturer and are not installed, combined, aggregated, or operated as part of a stationary BESS.

2. **BATTERY** — A single cell or a group of cells connected electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically.

3. **APPLICANT** — The person or entity that submits an application for a Special Use Permit for a BESS under these criteria and standards.

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

5. **COMMERCIAL OPERATION DATE (COD)** — The date on which the BESS first charges, discharges, or provides energy, capacity, ancillary services, reliability services, demand management, backup power, or other commercial service after receiving all required County approvals and applicable utility permission to operate.

6. **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.

7. **DEDICATED-USE BUILDING** — A building that is built for the primary purpose of housing BESS equipment and which is classified as moderate-hazard factory industrial (Group F-1) occupancy as defined in the International Building Code.

8. **OPERATOR** — The person or entity that holds an approved Special Use Permit for a BESS under these criteria and standards. Upon approval of an SUP, the Applicant becomes the Operator for purposes of ongoing operational, compliance, maintenance, decommissioning, and restoration requirements. Upon an approved transfer, the transferee becomes the Operator.

9. **TIER 1 BESS** — A BESS with aggregate energy capacity less than or equal to 80 kWh and, if in a room or enclosed area, consisting of only a single energy storage system technology.

10. **TIER 2 BESS** — A BESS with an aggregate energy capacity less than or equal to 600 kWh and which is not a Tier 1 BESS.

11. **TIER 3 BESS** — A BESS that is not Tier 1 or Tier 2.

C. Key Issues. The issues to be addressed in a development plan, if required, shall include, but are not limited to:

1. Cumulative Impact;

2. Decommissioning/Restoration;
3. Electromagnetic Interference;
4. Endangered Species;
5. Financial Security Agreement;
6. Infrastructure;
7. Land Use;
8. Lighting;
9. Native Vegetation and Weeds;
10. Noise;
11. Public Health and Safety;
12. Soil Erosion;
13. Visual Impact;
14. Water Quality; and
15. Wildlife Habitat

D. Area to be Included. Any BESS Special Use Permit shall encompass the entire perimeter of the proposed BESS, including all supporting BESS improvements and infrastructure.

E. Permitting Requirements for BESS; Compliance with County Codes.

1. Tier 1 BESS shall be permitted as an accessory use in all zoning districts, subject to compliance with the Zoning Code, applicable building, electrical, fire, and property-maintenance codes, and any required administrative BESS permit.
    a. Tier 1 BESS shall comply with the setback requirements applicable to accessory structures in the zoning district in which they are located, unless a more specific setback is required by applicable building, electrical, or fire code.
    b. Tier 1 BESS do not require an SUP, but may require a development plan or site plan review unless the Tier 1 BESS is part of a larger project that independently requires such approval, or if site-specific conditions require additional review under otherwise applicable County regulations.
2. All Tier 2 or Tier 3 BESS are subject to the following.
    a. The project must receive an approved SUP. Reference is made to Article 22 of the County Zoning and Subdivision Regulations relating to Special Use Permits and Temporary Use Permits.
        i. A BESS may be permitted in all zoning districts subject to the Zoning Code.

ii. A BESS may be permitted only upon specific findings that the BESS is compatible with surrounding uses, satisfies all setback and safety requirements, protects non-participating residences and occupied community buildings, and will not materially impair the public health, safety, or welfare. The Planning Commission and the Board of County Commissioners may consider any factor as set forth in Article 22, Section 6 of the County Zoning and Subdivision Regulations.

iii. The BESS project must meet the requirements of the principal building within the zoning district in which it is located.

iv. Notwithstanding the foregoing, BESS that are accessory to a permitted principal use and are under 2,000 square feet of total area dedicated to the use do not require a special use permit, unless located within 200 feet of a residential use or zone; however, such systems are subject in all respects to the requirements of these criteria and standards whether or not there is a special use permit.

b. The project shall be subject to site plan review.

i. Site plan review may be waived for Tier 2 BESS at the discretion of the Planning and Zoning Director.

ii. Where a BESS will be located within 200 feet of a residential use or zone, additional screening may be required and approved via the site plan approval process.

iii. Unless approved by a separate development plan in a planned district and accessory to a primary use, location and size will be determined by the development plan associated with the project.

3. All BESS, irrespective of the location or tier, shall comply with all applicable codes (building, fire, property, etc.) as may currently be in effect or hereafter amended in Leavenworth County.

F. Noise Standards.

1. A Noise Study shall be completed and included as part of a BESS development plan.

a. The study shall include pre-development and post-development tonal analysis in accordance with ANSI/ASA S12.9; and identification of best management practices (BMP) and best available technology (BAT) to address study findings.

b. The study shall be prepared by a qualified acoustical professional and shall evaluate tonal, low-frequency, and cumulative project noise at the nearest non-participating property line, non-participating residence, and occupied community building.

2. Soundproofing. For BESS on property adjacent to property with existing residential development, an approved development plan or plat showing residential development, or a zoning district permitting residential uses, any mechanical equipment located on the

property, whether on a rooftop, at ground level, or elsewhere on the exterior of the property, must be screened on all four sides by an acoustical barrier. Such barrier shall be an exterior solid or louvered wall containing soundproofing materials designed to absorb noise and protect neighboring properties from noise pollution.

3. Tonal analysis.

    a. Project only noise levels shall be determined through the predictive sound level modeling and incorporated into the development plan process and included as part of the final development plan submittal.

    b. Field verification of post development noise levels will be required as a condition of approval of any Special Use Permit issued under this article. Should additional sound reduction be required as a remedial action to field conditions, it shall be at the discretion of the Authority Having Jurisdiction (AHJ) and added as an addendum to the conditions of approval for the site.

4. The BESS shall not exceed the more stringent of the County's applicable zoning-district noise limit, the approved noise study limit, or any condition imposed by the Board of County Commissioners .

    a. Post-construction sound measurements shall be taken under representative operating conditions and shall be submitted to the Planning and Zoning Director.

    b. In no event may post-development levels exceed 65 dBA at the property line.

    c. If the required study cannot prove an absence of tonal content in a developed condition, a decrease of 10 dBA in the maximum project sound level or other appropriate adjustments will be required.

G. Special Use Permit Standards.

1. Dimensional criteria. Lot size requirements for the applicable zoning district where the battery energy storage system is located shall be followed; the minimum setback for all yards is 100 feet; yard setbacks shall be 300 feet if adjacent property is zoned or used for residential purposes; and the required minimum width of access or frontage roads on the property shall be not less than 20 feet and constructed of dustless paving materials.

2. Fencing requirements. Unless housed in a dedicated-use building, Tier 3 BESS, including all mechanical equipment, shall be enclosed by a minimum eight-foot fence with security or anti-scaling components and a self-locking, self-closing gate to prevent unauthorized access.

3. Screening and visibility. Tier 2 and Tier 3 BESS shall be screened from view from adjacent properties in residential zoning districts. Screening may consist of architectural features, earth berms, walls, fencing, landscaping, or other methods that harmonize with the character of the property and surrounding area. All screening elements, barriers, and exterior BESS enclosures shall be earthen in tone and harmonize with the surrounding area. Exterior BESS enclosures shall be architecturally compatible with the surrounding constructed environment.

a. Landscaping buffer. A minimum 25-foot landscaping buffer shall be required along all sides for all Tier 3 BESS.

b. Optional barriers. In addition to required screening, a BESS facility may install a barrier for all or a portion of a BESS for noise mitigation, visual screening, and/or security, as shown on an approved development plan.

4. Engineering review. Engineering review shall be required for all Tier 2 and Tier 3 BESS. The applicant shall pay review costs before any permit is issued.

5. Architectural elevations. Architectural elevations of the BESS enclosures shall be submitted with the preliminary development plan.

6. Stacking of enclosures. There shall be no stacking of individual BESS enclosures.

7. Chemical risks. The Applicant or Operator shall disclose battery chemistry, electrolyte composition, safety data sheets, fire-suppression agents, hazardous materials, toxic or corrosive gas risks, heavy metal risks, spill-control measures, hazardous-waste classifications, and post-incident cleanup procedures. The Board may prohibit or condition a chemistry, material, or fire-suppression agent where necessary to protect public health, safety, welfare, or environmental resources based on the record, applicable codes, and the recommendations of staff.

8. Hazardous materials. Hazardous materials located on the premises, including any hazardous lubricants, shall be stored and transported in accordance with all state and federal regulations.

9. Inspection. At any time, the County Commissioners may direct the Administrator and/or a designated person to field inspect a BESS special use project to determine current compliance with required conditions.

H. Site Plan Application Requirements.

For a Tier 2 or 3 battery energy storage system requiring site plan approval, the applicant's submission shall include those items required in the Leavenworth County Zoning Regulations as may be applicable, as well as identification of the foundation type that will be utilized for the battery energy storage system facilities in a code footprint, fire suppression designs, an emergency operations plan, a photometric plan, a stormwater runoff/detention and drainage plan, a site-specific hydrology study, and a statement identifying applicable state or federal environmental permits or any other necessary state or federal permits or regulations and assurance of compliance or copies of said permits if available, in addition to the typical site plan requirements.

I. Additional Requirements for Tier 2 and 3 Battery Energy Storage Systems.

1. Utility lines and electrical circuitry.

a. All on-site utility lines interconnecting individual enclosures of a BESS system shall be placed underground in appropriate conduits to the maximum extent feasible and as permitted by the serving utility. An exception may be made for the main service

connection at the utility company right-of-way and new interconnection equipment. All electrical lines and circuitry must comply with the National Electrical Code (NEC), National Fire Protection Association (NFPA), and fire codes pertaining to battery energy storage systems as may currently be in effect and adopted by Leavenworth County, the State of Kansas, or the responding fire agency.

b. A BESS shall have, among other equipment, a battery management system, gas, and fire detection devices, and be installed in accordance with NFPA 70 and with NFPA Standard 855 for installation of stationary energy storage systems or the equivalent or higher standard in existence at the time.

2. Signage.

    a. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of fire suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including a call-back phone number.

    b. As required, 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.

3. Lighting. All lighting associated with battery energy storage systems shall be limited to that minimally required for safety, security, and operation of the facility and in accordance with the approved photometric plan.

4. Vegetation and tree cutting. The Applicant shall submit and maintain a vegetation-management and combustible-materials-control plan. The plan must maintain defensible space around BESS equipment in accordance with the applicable fire code, NFPA 855, manufacturer requirements, the approved HMA, and the approved development plan, and must identify inspection frequency, mowing or grazing methods, herbicide practices if any, removal of combustible waste and debris, and procedures for preserving required screening while maintaining fire safety. Removal of trees should be minimized to the maximum extent possible and is only permitted in association with an approved development plan or other applicable permits.

5. One-line electric diagram. A one-line electric diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all NEC compliant disconnects and overcurrent devices, shall be required at the time of a Special Use Permit application.

6. Dedicated-use building requirements. A dedicated-use building shall comply with the following:

    a. No other occupancy types are permitted in the building.

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. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage systems provided the following:

i. The areas do not occupy more than 10% of the building area of the story in which they are located.

ii. A means of egress is provided from the administrative and support use areas to the exterior of the building that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

7. UL Certification. All equipment or materials and enclosures shall be integrated and UL certified offsite to ensure the highest level of performance for the intended design. The use of any non-UL equipment in the battery energy storage system must be pre-approved by Leavenworth County.

J. Contents of BESS Development Plan.

1. General Introduction.

a. The Development Plan shall be written in a style that is easily understood by the general reader.

i. Technical terminology shall be avoided as much as possible.

ii. Detailed technical data, statistics, and supplementary information required to support the main text is to be included as appendices.

iii. All sources of information are to be referenced and must be current.

iv. Information presented in the form of maps, diagrams, or plans is preferred as it is generally easier to understand.

b. The Applicant shall pay to the County a fee established by the adopted fee schedule upon filing the Special Use Permit.

c. Close consultation with the Leavenworth County Planning and Zoning Director during preparation of the Development Plan is highly recommended.

i. The Leavenworth County Zoning Director may be contacted at the Leavenworth County Courthouse, 300 Walnut St., Room 212, Leavenworth, KS.

ii. More than one draft may be required before it is considered suitable for presentation to the Planning Commission.

d. Leavenworth County reserves its right to determine further studies that may impact project sites or surrounding uses. Any such studies shall be accomplished through a third party, financed by the applicant and subject to the review and acceptance of the Planning Commission and BOCC of Leavenworth County.

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

    i. Applicant must provide proof of ownership or lease agreements with landowners within the project area.

    ii. Applicant must provide the names and addresses of all landowners within the BESS project area and all landowners within 1,000 feet of the exterior perimeter of the BESS area.

    iii. Notice of hearing on the Development Plan shall be sent by the Planning and Zoning Department to all such landowners by first class mail and shall be published once in the official County newspaper.

    iv. At least 20 days shall elapse between the date of the last publication and the date set for the public hearing.

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

2. Topographical Map.

    a. A topographical map with contours at intervals of 2 feet at a 1:200 Scale showing the locations of the following features: (U.S.G.S. Scale)

        i. Lot lines for each parcel under separate ownership included in the proposed BESS area and within 1,000 feet of its boundaries, together with a key identifying the owner of each parcel by owner name and CAMA parcel number.

        ii. All residential buildings and ownership within the boundaries of the proposed BESS and within 1,000 feet of the exterior perimeter of the BESS area.

    b. All public roads within the BESS area and within 1,000 feet of the exterior perimeter of the BESS area. The access points to the public roads to be used for both the construction and the operation phases of the project shall be designated. Bonding may be required to protect public improvements at the discretion of the Public Works Director.

i. ALTA Surveys to include Utility lines and pipelines within the BESS area must be provided as part of the PDP prior to construction.

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

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

iv. Location of all transformers, substations, connecting power lines and other structures to be used as part of the operation of the project (including the dimensions of such structures). Any changes in location of structures must comply with the setback rules herein. Applicant will notify County in writing of any plan or location changes prior to commencement of construction. All on-site improvements must be in general compliance with the approved PDP.

3. Term of Commercial Operation.

    a. The term of permit recommendation shall be limited to the period of the expected useful life of the BESS, as calculated from the Commercial Operation Date (COD) unless a shorter term is imposed based on project-specific finding.

    b. The Board of County Commissioners must approve any time extension of the approved Special Use.

    c. Substantial changes to an approved Special Use will require a new development plan and submittal for SUP approval.

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

5. General Construction Document Requirements. Applicant shall provide a general description of major components of the BESS and associated facilities to the point of interconnection including draft specifications, transmission lines and accessory facilities such as control rooms, transformers, inverters, substations, maintenance facilities, underground infrastructure, and interior access roads. Construction documents will be signed and sealed by a licensed Kansas Professional Engineer.

6. Soil Erosion Sediment Control and Storm Water Runoff. Applicants shall prepare and provide to the County a KDHE approved Storm Water Pollution Prevention Plan for all construction sites prior to building permit issuance.

7. Fire Safety and Emergency Response Guide.

    a. The applicant shall coordinate with local emergency responders including the fire department and Emergency Management on an emergency response guide (the ERG).

b. Such plan must be approved by the Emergency Management Director and developed per NFPA standards and guidance.

c. A draft of the ERG shall be submitted with the Preliminary Development Plan.

d. The ERG shall include, at a minimum, these elements:

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

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

iii. The ERG shall clearly define the roles and responsibilities of key stakeholders including the applicant, facility operator, equipment supplier, and local emergency response teams. Upon an occurrence of an extraordinary event, the applicant or facility operator shall notify the Emergency Management Director and the Director of Planning and Zoning of such event, and if the event is deemed to be a possible threat to public safety, immediately notify the Leavenworth County Sheriff's Department. Extraordinary events may include but are not limited to damaged storage containers, fire, explosion, collector-feeder line failure, or an injured person.

iv. The ERG shall establish well-defined emergency response protocols that are easily accessible, regularly reviewed, and regularly communicated to all relevant personnel. These protocols at a minimum should include: protocols for emergency identification and response, evaluating emergency situations, and notifying first responders. Protocols shall be in accordance with NFPA guidelines and include necessary submittals to applicable authorities having jurisdiction.

v. The ERG shall ensure that personnel are properly trained and prepared for emergency situations. The applicant at its expense, shall provide training to local emergency responders including the local fire department prior to the commencement of operations and provide said training annually thereafter.

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

9. Air Quality. Applicants shall submit a plan to control dust on roads which will be used during construction, which plan shall be a part of the Road Maintenance Agreement required below.

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

    a. Existing or proposed tourist or recreational activities including hunting and fishing;

    b. Agricultural activities;

    c. Residential activities;

    d. Commercial activities; and

    e. Industrial activities.

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

12. Appendices. All Detailed technical information that supports the Development Plan shall be included in the appendices. The features of the appendices shall be included in the main body of the Development Plan.

K. Prerequisites to Construction Under an Approved Special Use.

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

2. **Road Maintenance Agreement**.

    a. Transportation routes used for construction shall be coordinated with the Leavenworth County Public Works Director.

    b. Leavenworth County may require Applicant to provide and pay for an independent study of all or some of the roads, bridges, and culverts over which equipment for the BESS will travel during the construction phase to determine the ability of said roads, bridges, and culverts to withstand the expected traffic.

    c. A Road Maintenance Agreement by which the Applicant assumes financial responsibility for infrastructure improvements needed for construction and repair for infrastructure damages caused by construction must be entered into by the Applicant and by the Board of County Commissioners before any construction begins.

    d. Applicant shall be held liable for any damages to County roads or rights of way resulting from construction, deconstruction, and /or maintenance activities.

3. **Plume Modeling**:

    a. The applicant may be required to provide a plume modeling and dispersion study report using prudent industry standards and completed by a third party with expertise in the field of plume modeling and dispersion.

    b. The modeling shall evaluate facility design, equipment technology, metrology, topography, nearby structures, and suppression techniques.

4. **Hazard Mitigation Analysis**:

    a. The applicant shall provide a hazard mitigation analysis (the HMA) by evaluating potential energy system failure modes and the safety related consequences related to the failure modes.

    b. At a minimum the HMA will assess the implications of failure modes required by NFPA and the IFC.

    c. Facility design will be evaluated against these failure modes to verify the appropriate mitigation has been incorporated to address safety related consequences.

L. Construction Requirements.

1. Licensed Engineer.

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

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

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

3. Field Representative.

    a. Prior to the start of and continuously throughout the construction and site restoration, the Applicant (or, following SUP approval, the Operator) shall designate a field representative responsible for overseeing compliance with the conditions of the Special Use.

    b. Such representative shall be accessible by telephone during normal business hours. The address, phone number, and emergency phone number of such representative

shall be provided to the Emergency Managements Director, Planning and Zoning Director, and 911 Emergency Services.

c. The Operator shall notify the Emergency Management Director, Planning and Zoning Director, and 911 Emergency Services of any change in contact information.

4. Cleanup.

   a. The Operator shall remove all waste and scrap that is the product of construction, operation, restoration, and maintenance from the site and properly dispose of it upon the completion of each task.

   b. Any land restoration shall be done in a manner that is consistent with the terms of any lease agreement executed between the Operator and the landowner.

5. Fire Inspection.

   a. No Tier 2 or Tier 3 BESS may not be energized or placed in commercial operation until the Fire Code Official or other AHJ has completed and approved a pre-energization inspection confirming compliance with the approved plans, applicable fire code, NFPA 855, emergency access requirements, signage, fire detection, gas detection, fire-suppression or fire-control measures, remote monitoring, and emergency-response documentation.

   b. The Operator shall submit to periodic inspections by the County, Fire Code Official, Emergency Management Director, or their designees at least annually, after any material modification or augmentation, and after any extraordinary event.

6. Commissioning Report. Before commercial operation, the Applicant shall submit a commissioning report signed by a qualified professional confirming that the BESS was installed, tested, commissioned, and is capable of operation in accordance with the approved plans, equipment listings, fire-code approvals, utility interconnection requirements, and manufacturer requirements.

M. Decommissioning, Restoration, and Financial Security.

1. Decommissioning Agreement.

   a. The Applicant shall enter into a Decommissioning Agreement with the Board of County Commissioners before any construction begins.

   b. The Decommissioning Agreement shall provide assurance for the decommissioning of the BESS in accordance with an agreed Decommissioning Plan upon the termination or abandonment of BESS operations. The Applicant shall submit an escrow account, surety bond, insurance policy, or other suitable financial security acceptable to the County.

   c. The Decommissioning Agreement may allow reasonable adaptive reuse of the BESS in lieu of decommissioning all or part of the BESS. The Board of County Commissioners must consent to any such adaptive reuse.

d. Compliance with the Decommissioning Agreement shall, at all times, be a condition of the Special Use Permit.

e. The Decommissioning Agreement, or an abstract thereof, shall be recorded.

f. The Decommissioning Agreement shall specify a procedure for updating the Decommissioning Plan every five (5) years, including updating estimated decommissioning costs.

2. Decommissioning Plan

a. The Plan shall provide for the decommissioning of the site within eighteen (18) months of the abandonment or termination of BESS operations, including the termination of the SUP.

b. The Plan shall provide for removal of all above-ground equipment. This may include batteries, containers, transformers, inverters, collection lines, hazardous materials, and other BESS equipment.

c. The Plan shall provide for removal of foundations and pads to a depth of at least 4 feet below grade. The excavations shall be refilled with soil which is reasonably similar in quality, structure, and fertility to that of the original excavation, and which is to the landowner's satisfaction.

d. The Plan may provide for retention of fencing, roads, stormwater facilities, or other improvements to real estate if agreed to by the landowner and allowed in the Zoning District. Otherwise, the Plan shall provide for removal of such improvements.

e. The Plan shall specify recycling, reuse, transport, disposal, and waste-handling procedures.

f. The Plan shall provide site restoration standards to restore the site, as near as possible, to its pre-BESS topography and topsoil quality.

g. The Plan shall provide estimated decommissioning costs prepared by a qualified independent third party, and which must account for inflation. Estimated decommissioning costs shall not be offset by any estimates for recycling or salvage value. Failure to maintain required financial security is a violation of the Special Use Permit and grounds for suspension, enforcement, or revocation to the extent allowed by law.

3. Abandonment.

a. A BESS is abandoned if it has not charged, discharged, or provided an approved commercial or reliability service for six (6) consecutive months and the Operator has not submitted a commercially reasonable restoration, repair, repowering, or recommissioning plan accepted by the Board.

b. Temporary outage, force majeure, utility-directed curtailment, market suspension, maintenance, repair, or replacement do not constitute abandonment if the

Operator maintains the site, insurance, emergency contacts, and financial security and provides periodic status reports to the County.

c. The County may send a notice of abandonment to the Operator of an abandoned BESS. Such notice shall be transmitted as specified in the Decommissioning Agreement.

d. After said notice is sent, the Operator shall be afforded an opportunity, pursuant to the Decommissioning Agreement, to cure the abandonment, where such cure period may not exceed six (6) months.

e. If the cure period expires and the BESS remains abandoned, then the Board of County Commissioners may undertake decommissioning in conformity with the Decommissioning Agreement.

N. Operational Requirements for BESS Special Uses.

1. Compliance. The Operator shall maintain records of inspections, maintenance, emergency training, fire-code operational permits (if applicable), battery management system alarms, material incidents, repairs, augmentations, and changes to operating limits, and shall provide annual compliance certification to the County.

2. Amendment or Modification. A BESS may be repaired, replaced, or augmented without a new special-use permit only if the change is substantially consistent with the approved development plan, remains within the approved security perimeter, does not reduce approved setbacks, does not materially change battery chemistry or fire risk, and is preceded by at least 90 days' written notice and an updated site plan. Any other augmentation or material modification requires amended development-plan approval and, if determined by the Board, amendment of the special-use permit."

3. Hazardous Materials. All hazardous materials located on the premises, including any lubricants, shall be kept and transported in accordance with all state and federal regulations.

4. Visual Impact. The Operator shall take reasonable measures to mitigate specific adverse visual impacts affecting residences within or immediately adjacent to the BESS Special Use area.

5. Electromagnetic Interference. The Operator shall comply with applicable FCC, utility, and interconnection requirements governing electromagnetic interference, communications, telemetry, and control systems. Depending on site conditions, the Applicant may be required to conduct a microwave beam path survey.

6. Extraordinary Event Response.

    a. Upon an occurrence of an extraordinary event, the Applicant or Operator shall notify the Emergency Management Director and the Planning and Zoning Director of such event and, if the event is deemed to be a possible threat to public safety immediately notify the Leavenworth County Sheriff.

b. Extraordinary events include damaged storage containers, fire, explosion, collector-feeder line failure, injured worker or citizen, or kills or damages to threatened or endangered species. In the event of any extraordinary endangered species mortality, the Applicant or Operator shall notify Kansas Department of Wildlife, Parks and Tourism and the U.S. Fish and Wildlife Service as required by law.

7. Financial Security. The applicant shall submit and maintain the financial security required under the Decommissioning Agreement.

O. Transfer of Special Use.

1. The holder of a BESS Special Use Permit shall advise prospective transferees of all requirements of the BESS Special Use.

2. A transfer fee of $5,000.00 shall be paid to the County to compensate for work related to the transfer. Such fee shall be tendered at the time of the pre-transfer notice.

3. Not later than sixty (60) days before any transfer of ownership, operator control, or controlling interest, the proposed transferor and transferee shall notify the Board of County Commissioners and provide updated owner and operator information, emergency contacts, proof of insurance, proof of financial security, written assumption of all permit conditions, and updated decommissioning and emergency-response contacts. No transfer of ownership, Operator control, or controlling interest in a BESS Special Use Permit shall be effective until approved by the Board of County Commissioners.

4. The transferee shall meet all requirements of the BESS Special Use.

P. Indemnification; Proof of Insurance.

1. The Operator shall indemnify and hold County harmless from and against any and all claims, demands, suits, and losses to the extent arising out of, relating to, or resulting from or in connection with the negligent action or omission of the Operator or its contractors or assigns during the development, construction, or operation of the BESS project located in Leavenworth County, Kansas. Notwithstanding the foregoing, in no event shall the Operator, its contractors or assigns (or any of their respective affiliates, members, shareholders, officers, directors, agents, or employees) be liable for consequential, incidental, indirect, special, exemplary, or punitive damages.

2. During the construction phase of the project, the Applicant or its main contractor shall, at their own expense, maintain the following insurance policies:

a. Commercial General Liability Insurance. The Applicant or its main contractor shall maintain Commercial General Liability Insurance for the BESS project on an "occurrence" basis, including coverage for: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability; Personal Injury Liability; Broad Form Property Damage Liability; Broad Form Contractual Liability supporting the Operator's indemnification agreements in favor of the additional insureds; Completed Operations and Products Liability for a period of one (1) year following the date of final completion of the BESS project; and Independent Contractor's

Protective Liability. Such policy shall have primary coverage limits of One Million Dollars ($1,000,000.00) for injuries or death to one or more persons or damage to property resulting from any one occurrence and a Two Million Dollars ($2,000,000.00) aggregate limit.

b. Commercial Automobile Liability Insurance. The Applicant or its main contractor shall maintain Commercial Automobile Liability Insurance, including coverage for owned, non-owned, rented, leased, and hired automobiles for both bodily injury and property damage in accordance with state legal requirements, with a combined single limit of not less than One Million Dollars ($1,000,000) per accident with respect to bodily injury, property damage, or death.

c. Umbrella Excess Liability Insurance. The Applicant or its main contractor shall maintain Umbrella Excess Liability Insurance with a limit of Twenty-Five Million Dollars ($25,000,000.00) per occurrence and annual aggregate limit of Twenty-Five Million Dollars ($25,000,000.00) with Completed Operations and Products Liability coverage, which coverage shall remain in effect for one (1) year after the date of final completion of the BESS project.

d. Workers' Compensation and Employer's Liability Insurance. The Applicant or its main contractor shall maintain Workers' Compensation Insurance with statutory limits (as may be amended from time to time), including Employer's Liability Insurance with limits of liability of not less than (i) One Million Dollars ($1,000,000.00) for bodily injury by accident, each accident, (ii) One Million Dollars ($1,000,000.00) for bodily injury by disease, each employee, and (iii) One Million Dollars ($1,000,000.00) aggregate liability for disease.

3. After construction is complete, during the operational phase of the project, the Operator shall maintain the insurance policies provided above, except that the limits of the Umbrella Excess Liability Insurance may be reduced to a lower figure if approved by the Board of County Commissioners.

4. The Board of County Commissioners may require the Operator to maintain adequate pollution legal liability or environmental impairment liability insurance covering, at a minimum, third-party bodily injury, property damage, cleanup costs, emergency response costs, transportation-related pollution conditions, disposal-related pollution conditions, fire-related emissions, contaminated runoff, release or threatened release of hazardous materials, and post-incident investigation, monitoring, remediation, removal, transport, recycling, and disposal.