ATTACHMENT 1

PROPOSED ZONING CODE AMENDMENT TEXT

ADDING SECTION 7-9-122 AND AMENDING SECTION 7-9-134.6 TO TITLE 7 OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE REGARDING REGULATION OF BATTERY ENERGY STORAGE SYSTEM FACILITIES

Section 7-9-122 of the County of Orange Ordinances is hereby amended to read in its entirety as follows:

Sec. 7-9-122 – Battery Energy Storage System Facilities

This section shall be referred to as the "County of Orange Battery Energy Storage System Facilities Ordinance."

Should there be a conflict between the provisions of this section and other sections of the Orange County Zoning Code, this section shall control.

Sec. 7-9-122.1. - Purpose and intent.

Battery Energy Storage System Facility regulations are adopted with the intent of advancing and protecting the public health, safety, and welfare of the County of Orange by establishing regulations for the installation and use of energy storage systems. The regulations herein are intended to protect the health, welfare, safety, and quality of life for the general public, to ensure compatible land uses in the areas affected by energy storage facilities and to mitigate the impacts of energy storage facilities on the environment.

7-9-122.2. - Classification of Battery Energy Storage System Facilities.

(a) Definitions. For the purposes of this section, the following definitions shall apply:

Battery. A single cell, stack, core building block, or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this section, batteries utilized in consumer products are excluded from these requirements.

Battery Management System. An electronic system that prevents storage batteries from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected. The system generates an alarm and trouble signal for abnormal conditions.

Battery Energy Storage System. A system consisting of electrochemical, kinetic, thermal, or other form of energy-storage technology storage batteries, battery chargers, controls, power conditioning systems and associated electrical equipment, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A Battery Energy Storage System is a type of Energy Storage System.

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

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

Decommissioning Plan. A plan to retire the physical facilities of the Project, including decontamination, dismantlement, rehabilitation, landscaping and monitoring. The plan contains detailed information on the proposed decommissioning and covers the schedule, type and sequence of decommissioning activities; waste management, storage and disposal of the waste from decommissioning; the timeframe for decommissioning and site rehabilitation.

Energy Storage System. A system which stores energy and releases it in the same form as was input.

7-9-122.3. - Applicability.

(a) The requirements of this ordinance shall apply to all battery energy storage system facilities permitted, installed, or modified after the effective date of this ordinance, excluding general maintenance and repair and facilities subject to subsection (b). Battery energy storage system facilities constructed or installed prior to the effective date of this ordinance shall not be required to meet the requirements of this section. Modifications to, retrofits or replacements of an existing battery energy storage system facility that increases the total energy storage system designed discharge duration or power rating shall be subject to this section. The continuation of legally established existing battery energy storage system facilities shall be subject to the regulations and guidelines of Sec. 7-9-115 Nonconforming Uses and Structures.

The requirements of this ordinance apply to the unincorporated areas including planned communities, specific plans, and local coastal plan areas if battery energy storage system facility is a permitted use by those community plans.

(b) The requirements of this ordinance may not apply to battery energy storage system facilities subject to Chapter 6.2 (commencing with Section 25545) of Division 15 of the Public Resource Code, as may be amended.

(c) The requirements of this ordinance shall not apply to residential and non-residential energy storage systems subject to California Energy Code, Title 27, Part 6, as may be amended.

7-9-122.4. - Approvals Required

Battery energy storage system facilities shall be permitted subject to a Use Permit to the Planning Commission.

7-9-122.5. – Siting Limitation

(a) A battery energy storage system facility shall not be located on a parcel in a very high fire hazard severity zone.

(b) Upon review of a project application, OCFA and the County of Orange may further limit siting of a BESS facility if OCFA or the Building Official makes a written finding that the proposed BESS facility location would have an adverse impact upon public health and safety for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

7-9-122.6. - Development Standards.

(a) Battery energy storage system facilities must meet all applicable standards of the adopted Building and Safety Codes and of the adopted Fire Codes in effect on the date an application is submitted.

(b) Battery energy storage system facilities shall comply with the site design requirements set forth below in addition to all other applicable sections of the Orange County Zoning Code:

(1) Battery energy storage system facilities shall not be located within 500 feet of any community buildings and residential uses as measured from the property line unless the applicant demonstrates a valid consideration that justifies a modification to the required distance of separation from community buildings and residential uses.

(2) All equipment or appurtenances shall be located within an enclosed building. However, accessory structures such as utility poles or utility connection equipment substation switchyard, and similar equipment, necessary for the operation of the facility is not required to be located within the enclosed building.

(3) Where visible from a public right of way, the site shall be fully enclosed by a minimum six-foot, non-scalable solid wall. Where not visible from a public right of way, the site shall be enclosed by a minimum six-foot, non-scalable solid wall or tubular steel or wrought iron fencing. Said wall or fencing shall be located outside of the required yard area of the applicable zoning designation. Walls shall consist of either decorative concrete masonry block or decorative concrete tilt-up walls. Decorative masonry block means neutral colored slump stone block, split-face block, or precision block with a stucco, plaster, or cultured stone finish. Decorative concrete tilt-up wall means concrete with a combination of paint and raised patterns, reveals, and/or trim lines.

When sound and visual attenuation requires a wall exceeding six (6) feet above the grade of the adjacent roadway, earth mounds shall be used, such that no more than six (6) feet of the wall is visible from the roadway. The mounds shall not exceed a three-to-one (3:1) ratio slope. The mounds may support the wall or be placed against the wall on the street side.

Maximum wall heights shall comply with Sec. 7-9-64. - Fences, walls, hedges.

(4) No landscaping is required on the interior side of the screen walls described in subparagraph (1), above, regardless of the percentage of open space landscaped required.

The minimum required open space, as required by this ordinance, shall be limited to the perimeter landscaping surrounding the perimeter screening wall or fencing described in subparagraph (1), above. Said perimeter landscaping shall be no less than the applicable required yard setbacks and shall not conflict with any vegetation requirements set by the Orange County Fire Authority.

(5) Solid walls surrounding facilities which are below grade of an adjacent street or property shall incorporate a berm/slope along the entire length of the wall to ensure facilities are not visible from public view.

(6) Anti-graffiti coating or equivalent measure to prevent graffiti shall be provided for all solid screen walls.

(7) Except as set forth in subparagraph (6), no equipment or appurtenances not in an enclosed structure shall exceed the screen wall height described in subparagraph (1), above, unless it can be demonstrated through a line-of-sight analysis to the satisfaction of the approval body that the wall height will sufficiently screen said equipment and/or appurtenances. Enclosures for batteries and other systems shall not exceed fifteen feet in height.

(8) Accessory structures such as utility poles or utility connection equipment, substation switchyard and similar equipment, necessary for the operation of the facility may exceed the height standards of the applicable zoning district subject to Planning Commission approval of a Use Permit specifically addressing height standards.

(9) On-site parking shall be provided as specified below:

(i) For sites occupied daily by employees or contractors, the number of parking spaces shall comply with requirements for public facilities and services set forth in Sec. 7-9-70.6 – Number of off-street parking spaces required for non-residential uses.

(ii) For unoccupied sites, one on-site parking space shall be provided.

(iii) All parking, fire access roadway, and drive aisles shall be paved with asphalt or concrete.

(iv) All parking lots shall comply with Sec. 7-9-70. - Off-street parking and loading regulations.

(v) All facilities shall have an approved signage plan including safety signage to be posted at the site.

(10) All lighting and illumination shall meet requirements set forth by Sec. 7-9-67. - Lighting and illumination.

(11) Any on-site signage shall comply with Sec. 7-9-114.4. - General requirements for all signs.

(12) All improvements and site specifications shall be subject to approval of a Hazard Mitigation Analysis. Said reports shall be reviewed by the County of Orange Building & Safety Division and the Orange County Fire Authority. These reports must be approved concurrent with any entitlements. The purpose of this analysis is to evaluate the potential for adverse effects to people or the environment related to hazards and hazardous materials. As part of that analysis, please reference the California Environmental Quality Act (CEQA) required analysis of potential adverse effects of a project on the environment. Consistent with Appendix G of the CEQA Guidelines, a proposed project would cause adverse impacts related to hazards and hazardous materials if they would create a significant hazard to the public or the environmental through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

(13) The owner or operator of a battery energy storage system facility shall submit an emergency response and emergency action plan pursuant to Government Code Section 761.3 or Chapter 4 of Division 1 of the Public Utilities Code with the Use Permit application for a battery energy storage system facility. Said plan shall be reviewed by the County of Orange Building & Safety Division and the Orange County Fire Authority. The plan must be approved concurrent with any entitlements. In developing the emergency response and emergency action plan, the owner or operator of the battery energy storage facility shall coordinate with local emergency management agencies, unified program agencies, and local first response agencies.

(14) Any permit application that includes a request for deviation from development standards set forth in this section shall be reviewed and approved by the Planning Commission through a Use Permit process.

7-9-122.7. - Decommissioning.

(a) Decommissioning Plan. Prior to issuance of building permits, the applicant shall submit a Decommissioning Plan containing a narrative description of the activities to be accomplished for removing the battery energy storage system from service, and from the facility in which it is located. The Decommissioning Plan shall be reviewed by the County of Orange Building & Safety Division and the Orange County Fire Authority, and other agencies as may be required. The Decommissioning Plan shall also include:

(1) A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time following the closure of the facility, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;

(2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;

(3) The anticipated life of the battery energy storage system;

(4) The manner in which the battery energy storage system will be decommissioned, and the site restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and

(5) A listing of any contingencies for removing an intact operational battery energy storage system from service, and for removing a battery energy storage system from service that has been damaged by a fire or other event.

(b) Prior to issuance of building permits, the applicant shall submit financial assurance in the form of a surety bond, irrevocable letter of credit, or an equivalent financial assurance mechanism to guarantee that funds are available to cover all costs associated with activities identified in the Decommissioning Plan.

(c) Ownership Changes. If the owner of the battery energy storage facility changes or the owner of the property changes, the project approvals shall remain in effect, provided that the successor owner or operator provides updated financial assurance and assumes in writing all the obligations of the project, site plan approval, and Decommissioning Plan. A new owner or operator of the battery energy storage system facility shall notify the Development Services Division of such change in ownership or operator, and provide updated financial assurance and assumes in writing all the obligations of the project, site plan approval, and Decommissioning Plan within 30 days of the ownership change. A new owner or operator must provide such notification to the Deputy Director of OC Development Services in writing. The project and all approvals for the battery energy storage system facility is void if a new owner or operator fails to provide written notification to the Deputy Director of OC Development Services within 30 days. Reinstatement of a voided project or approvals will be subject to the same review and approval processes for new applications under this section.

(d) The owner or operator is responsible for submitting an updated Decommissioning Plan to the County of Orange Building & Safety Division and the Orange County Fire Authority, along with updated financial assurance to the County of Orange, when changes to an approved BESS facility warrant updates to these requirements.

7-9-122.8. - Performance Measures and Standard Conditions of Approval.

The following measures shall be included as performance measures and standard conditions of approval for all battery energy storage system facilities to which this section applies.

(a) Facilities shall not store any products, goods, materials, or containers outside of any building on-site.

(b) Facilities shall comply with Title 4, Division 6 - Noise Control Regulations of the County of Orange Codified Ordinances.

(c) Operators shall address any nuisance, safety issues or violations of conditions of approval within forty-eight hours of being notified by the County of Orange that an issue exists.

(d) Prior to the issuance of a Certificate of Occupancy, any operator of an energy storage facility shall sign a statement acknowledging acceptance of all operational conditions of approval associated with the approved entitlements for the facility.

7-9-122.9. - Finding of Economic Benefit; Public Benefit Agreement; Exempt Projects.

(a) Consistent with Public Resources Code section 25545.9, and in addition to all other findings and determinations necessary for the grant of a use permit, no use permit for a battery energy storage system facility shall be granted unless the County of Orange finds that the construction and operation of the facility will have an overall net positive economic benefit to the County. For purposes of this sub-section, economic benefits may include, but are not limited to, any of the following:

(1) Employment growth.

(2) Housing development.

(3) Infrastructure and environmental improvements.

(4) Assistance to public schools and education.

(5) Assistance to public safety agencies and departments.

(6) Property taxes and sales and use tax revenues.

(b) Consistent with Public Resources Code section 25545.10, no use permit for a battery energy storage system facility shall be granted unless the applicant has entered into a legally binding and enforceable agreement with, or that benefits, a coalition of one or more community-based organizations, such as workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that represent community interests, where there is mutual benefit to the parties to the agreement – i.e., "Community Benefit Agreement". The topics and specific terms of the community benefits agreements may vary and may include funding for or providing specific community improvements urban greening, enhanced safety crossings, and paving roads and bike paths.

(c) The County of Orange finds and declares that, where a battery energy storage system facility is issued a certificate pursuant to Chapter 6.2 (commencing with Section 25545) of Division

15 of the Public Resources Code, and where such certificate is in lieu of a use permit or other permit, certificate, or document required by the County of Orange, a Community Benefit Agreement in the form described in subsection (b), above, shall satisfy the obligations on Public Resources Code section 25545.10.

Section 7-9-134.6 is hereby amended as follows:

Sec. 7-9-134.6 - Transportation, Communication, and Utility Uses.

(a) *Airports and heliports.* Facilities for the takeoff and landing of airplanes and helicopters, including runways, helipads, aircraft storage buildings, public terminal buildings and parking, air freight terminals, baggage handling facilities, aircraft hangar and public transportation and related facilities, including bus operations, servicing and storage. This classification also includes support activities such as fueling and maintenance, storage, airport operations and air traffic control, incidental retail sales, coffee shops and snack shops, and airport administrative facilities, including airport offices, terminals, operations buildings, communications equipment, buildings and structures, control towers, lights, and other equipment and structures required by the United States Government and/or the State for the safety of aircraft operations.

(b) *Battery Energy Storage System Facilities*. See Sec. 7-9-122. - Battery Energy Storage System Facilities.

(c) *Bus/rail passenger station.* Facilities for passenger transportation operations. This classification includes rail and bus stations and terminals but does not include terminals serving airports or heliports. Typical uses include ticket purchasing and waiting areas out of the public right of way, restrooms, and accessory uses such as cafes.

(d) *Car share service.* See section 7-9-134.4 "Car sharing service."

(e) *Communication facilities.* Facilities for the provision of broadcasting and other information-relay services through the use of electronic and telephonic mechanisms.
   (1) Antenna and transmission towers. Broadcasting and other communication services accomplished through electronic or telephonic mechanisms, as well as structures and equipment cabinets designed to support one (1) or more reception/transmission system(s). Typical uses include wireless telecommunication towers and facilities, radio towers, television towers, telephone exchange/microwave relay towers, and associated equipment cabinets and enclosures.
   (2) Facilities within buildings. Facilities located completely within a building including communication equipment and storage devices such as computer servers.

(f) *Freight/truck terminals, transfer stations, and warehouses.* Facilities for freight, courier, and postal services. This classification does not include local messenger and local delivery services.

(g) *Utilities, major.* Includes utility buildings and structures such as generating plants, electric substations, cogeneration facilities, commercial renewable energy facilities, water or wastewater treatment plants, telephone switching facilities, and similar facilities of public agencies or public utilities that are subject to land use permit requirements as provided for in Government Code Section 53091, as may be amended.

(h) *Utilities, minor.* Facilities necessary to support established uses involving only minor structures, such as overhead electrical distribution lines, and underground electrical, water, and sewer lines.

(i) *Wind energy conversion system.* A wind energy conversion system consists of a wind turbine and associated control or conversion electronics, including appurtenances, such as a tower or ladder.