

RESOLUTION NO. R-2025-27

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO AMENDING CHAPTERS 62, 66, AND 73 OF THE LA PLATA COUNTY CODE

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1)(e) and (2), 30-11-103, and 30-11-107(1)(e), the Board of County Commissioners of La Plata County, Colorado (the “Board”), has the legislative authority to manage the business and concerns of the County and to exercise such other and further powers as are conferred by law when deemed by the Board to be in the best interests of the County and its inhabitants, and is further authorized by *inter alia*, C.R.S. §§ 30-28-101, *et seq.*, C.R.S. §§ 30-28-201, *et seq.*, and C.R.S. §§ 29-20-101, *et seq.*, to adopt regulations for the protection of the public health, safety, and welfare of the inhabitants of La Plata County; and

WHEREAS, pursuant to the Colorado County Planning Code, the Board is empowered to plan and provide for the physical development of the unincorporated territory of La Plata County (the “County”). C.R.S. § 30-28-102; and

WHEREAS, the Local Government Land Use Control Enabling Act empowers the Board to plan for and regulate the use of land within the unincorporated territory of the County, including but not limited to: regulating the use of land on the basis of the impact thereof on the community or surrounding areas; regulating the location of activities and developments which may result in significant changes in population density; providing for phased development of services and facilities; and otherwise providing for the planned and orderly use of land and protection of the environment, in a manner consistent with constitutional rights. C.R.S. § 29-20-104; and

WHEREAS, the Colorado County Planning Code and Local Government Land Use Control Enabling Act constitutes a broad delegation of authority to the County, generally encompassing the subject of land use; and

WHEREAS, Colorado counties possess those powers enumerated by the Colorado Constitution and Colorado Revised Statutes, and such further incidental implied powers as are reasonably necessary to carry out their express powers; and

WHEREAS, the Board has previously adopted land use code of regulations (the “Land Use Code”) with respect to development throughout the County; and

WHEREAS, the current regulations in the Land Use Code are not sufficient to address battery energy storage systems (BESS), and the Land Use Code has no regulations specifically regulating BESS; and

WHEREAS, on June 17, 2025 the Board adopted a Resolution No. 2025-12 enacting a temporary moratorium on the acceptance and processing of BESS applications to allow the County sufficient time to research, develop, and promulgate amendments to Land Use Code pertaining to BESS; and

WHEREAS, on _____, 2025, the Planning Commission held a public meeting and heard testimony that it would be in the best interest of the general health, safety and welfare of the people within the County to amend **Chapters 62, 66, and 73** of the Land Use Code, and made a recommendation to the Board to adopt the related amendments as set forth in Exhibit A; and

WHEREAS, notice of a public hearing to be held before the Board on _____, 2025 on the proposed amendments set forth in Exhibits A was published on _____, 2025 in the Durango Herald, a newspaper of general circulation in the County; and

WHEREAS, in accordance with the published notice the Board held a public meeting on _____, 2025 to consider the amendments set forth in Exhibit A; and

WHEREAS, the Board has received competent evidence and testimony that it would be in the best interest of the general health, safety, and welfare of the County's citizens to amend **Chapters 62, 66, and 73** as set forth in the attached Exhibit A to address the County's needs for regulations capable of use by the County in its future planning, regulation, inspection, and oversight of BESS development within the unincorporated parts of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE LA PLATA COUNTY BOARD OF COUNTY COMMISSIONERS:

1. The foregoing recitals are incorporated herein and made a part of this resolution.
2. **Chapters 62, 66, and 73** of the La Plata County Code are hereby amended as set forth in the attached Exhibit A.
3. This resolution shall apply within the unincorporated territory of La Plata County. This resolution shall in no way limit application and enforcement of any statutes of the State of Colorado, but shall be in addition thereto.
4. This resolution shall be liberally construed so as to further its purposes.
5. The County Attorney's Office is authorized to make additional form and style-type revisions including but not limited to spelling, grammar, punctuation, structure and numbering, statutory references, internal cross-references, and other conforming-type revisions, but not revisions that are substantive in nature.
6. The proposed amendments are appropriate and lawful land use regulations for the unincorporated territory of the County and to address the County's needs for a code capable of use by the County in its future planning of development within the unincorporated parts of the County.
7. This resolution shall supersede any and all prior resolutions or motions inconsistent with this resolution except to the extent a new provision is held invalid, in which case a prior

resolution and prior code provision will remain in effect. If any portion of this resolution is held invalid for any reason, such decision shall not affect the validity of the remaining portions of this resolution. The Board of County Commissioners hereby declares this resolution and the provisions contained in Exhibit A to be severable and further declares that it would have passed this resolution and each amendment to **Chapters 62, 66, and 73** of the Land Use Code irrespective of the fact that any one part of the amendments in Exhibit A be declared invalid.

8. The enactment of this Resolution is necessary for the preservation of public health, safety, and welfare and, therefore, will be effective immediately upon adoption by the Board.

DONE AND ADOPTED IN DURANGO, LA PLATA COUNTY, COLORADO, this ____ day of _____, 2025.

BOARD OF COUNTY COMMISSIONERS OF
LA PLATA COUNTY, COLORADO

ATTEST:

Clerk to the Board

Marsha Porter-Norton, Chair

Matt Salka, Vice-Chair

Elizabeth Philbrick, Commissioner

SEC. 62-5 DEFINITIONS

Battery Energy Storage System (BESS): One or more devices, assembled together, capable of storing and discharging electricity primarily intended to supply electricity to a structure or to the electrical grid. This includes, but is not limited to, the following when associated with the system: battery cells; enclosures and dedicated-use buildings; thermal, battery, and energy management system components; inverters; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; overhead and underground control, communications and radio relay systems, and telecommunications equipment; utility lines and installations; and accessory equipment and structures.

Energy Storage Management System: An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to and from the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

Large scale BESS: A BESS with a capacity greater than 5 MWh and less than or equal to 10 MWh.

Micro BESS: A BESS with a capacity less than or equal to 600 kWh.

Small scale BESS: A BESS with a capacity greater than 600 kWh and less than or equal to 5 MWh.

Utility scale BESS: A BESS with a capacity greater than 10 MWh.

SEC. 66-3 LAND USE DEVELOPMENT NOT REQUIRING A LAND USE PERMIT (BUILDING PERMITS MAY BE REQUIRED)

- I. **No land use permit required.** No land use permit shall be required for any of the following developments unless specifically required by other sections of this code:
 - Q. **Micro BESS.**

SEC. 66-5 PROJECTS CLASSIFIED AS ADMINISTRATIVE LAND USE PERMITS

- I. **Administrative land use permit required.** An administrative land use permit shall be required for any of the following developments:
 - P. **Small scale BESS intended primarily to serve the electricity needs of the applicant property but may, at times, discharge into the electric grid pursuant to section 73-6.**

SEC. 66-6 PROJECTS CLASSIFIED AS MINOR LAND USE PERMITS

- I. **Minor land use permits required.** A minor land use permit shall be required for any of the following developments:
 - V. **Large scale BESS intended primarily to serve the electricity needs of the applicant property but may, at times, discharge into the electric grid pursuant to section 73-6.**

SEC. 66-14 NOTICE REQUIREMENTS

- III. **General requirements for notice.**
 - B. **Exceptions.**
 - 4. **For large and utility scale BESS, surrounding landowners shall include owners of property within one thousand (1,000) feet of the property line of the parcel subject to an application for a land use permit.**

SEC. 70-8 AVOIDANCE OF NATURAL HAZARDS AND PROTECTION OF SENSITIVE LANDS

VIII. **Wildfire protection.** All applicants for new **utility scale BESS**, subdivisions, or PUDs located in areas identified as high ~~to very high or greater~~ wildfire burn probability based upon the Colorado State Forest Service – Colorado Wildfire Risk Assessment mapping should incorporate and explain wildfire mitigation efforts in the project.

A. Wildfire standards. To the maximum extent feasible, all applicants for new **utility scale BESS**, subdivisions, or PUDs located in areas having high to very high wildfire burn probability based upon the Colorado State Forest Service – Colorado Wildfire Risk Assessment mapping shall submit an assessment identifying the level of risk of wildfire and incorporate wildfire mitigation efforts in the project on the parcel(s) subject to development. The assessment and mitigation shall be provided to Colorado State Forest Service for comments. The requirements may include, but not be limited to:

1. Incorporating open space, if required by this code, in a way that also assists in providing larger defensible spaces or fire breaks between the development and adjacent sources of wildfire;
2. Incorporate ongoing maintenance requirements for defensible space and other fire mitigation efforts in organization documents for the governing body, such as a homeowners' association or as a plat note, when applicable;
3. Where deemed advantageous by the applicable fire district for wildland fire fighting purposes, dedicate access and fire-fighting easements in a form acceptable to the county attorney.

B. Defensible space guidelines. All development is encouraged to follow the guidelines in the Colorado State Forest Service ~~Quick Guide Series Fire 2012-1 Protecting Your Home from Wildfire—Creating Wildfire Defensible Zones~~ **The Home Ignition Zone – A guide to preparing your home for wildfire and creating defensible space**, providing for defensible space and hardening of homes.

SEC. 73-6 BATTERY ENERGY STORAGE SYSTEMS (BESS)

- I. **Purpose.** The purpose of this section is to allow for a reasonable permitting process for BESS development and to encourage the use of various scales of renewable energy development.
- II. **Applicability.** This section shall apply to small, large, and utility scale BESS facilities.
- III. **Review Standards:**
 - A. Micro BESS does not require a land use permit.
 - B. Small scale BESS intended primarily to serve the electricity needs of the applicant property but may, at times, discharge into the electric grid shall require an administrative land use permit.
 - C. Large scale BESS intended primarily to serve the electricity needs of the applicant property but may, at times, discharge into the electric grid shall require a minor land use permit.
 - D. Utility scale BESS or BESS for the primary purpose of off-site use through the electrical grid shall be reviewed under chapter 69 as a major facility of a public utility.
- IV. **Standards specific to small, large, and utility scale BESS.**
 - A. System Certification. BESS shall be in compliance with the most current adopted editions of NFPA 855 – Standard for the Installation of Stationary Energy Storage Systems and the International Fire Code section 1207 – Electrical Energy Storage Systems at the time of application submittal. Compliance includes that all system components and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for Energy Storage Systems and Equipment) and that BESS are subject to UL 9540A (Test Method for Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems), as applicable.
 - B. Energy Storage Management System. BESS shall be configured so that battery cells shall be placed in an Energy Storage Management System. The Energy Storage Management System shall provide a secondary layer of physical containment to the batteries and be equipped with cooling, ventilation, and fire suppression and monitoring systems.
 - C. Setbacks. The following minimum setback distances shall apply:
 1. Setback distances shall be measured from the nearest edge of the perimeter fencing.
 2. Small and large scale BESS
 - a. 100 feet from any existing on-site dwelling;
 - b. 100 feet from the legally described boundary line of a public right-of-way;
 - c. 100 horizontal feet from wetlands, and the bank high-water line of streams and rivers;

- d. 200 feet from the property line of an adjacent parcel containing any one or more of the following: a school, childcare center, or community facility;
 - e. 200 feet from the property line of an adjacent parcel containing a dwelling unit;
 - f. 100 feet from any other property line of any other adjacent parcel.
- 3. Utility scale BESS
 - a. 100 feet from any existing on-site dwelling;
 - b. 100 feet from the legally described boundary line of a public right-of-way;
 - c. 100 horizontal feet from wetlands, and the bank high-water line of streams and rivers;
 - d. 400 feet from the property line of an adjacent parcel containing any one or more of the following: a school, childcare center, or community facility;
 - e. 400 feet from the property line of an adjacent parcel containing a dwelling unit;
 - f. 200 feet from any other property line of any other adjacent parcel.
- D. Screening/Visibility. To the maximum extent feasible, BESS and equipment shall be screened from view when the adjacent property use is non-industrial. Screening is not subject to the setbacks in paragraph 73-6.IV.C.
- E. Defensible space and vegetation management.
 - 1. All combustible vegetation or other combustible growth within thirty (30) feet of any large-scale or utility-scale BESS enclosure shall be cleared, and any tree stumps within this area shall be removed.
 - 2. Single specimens of trees, shrubs, or cultivated ground cover (such as maintained green grass or other low-fuel plants) may be permitted within this 30-foot area, provided they do not form a means of readily transmitting fire to the BESS enclosure or to other vegetation on the site.
 - 3. Beyond the initial 30-foot clearance zone, a secondary defensible space shall extend to at least 100 feet from the BESS enclosure (or to the property boundary, whichever is less). Within this zone, vegetation shall be thinned, mowed, or otherwise maintained to reduce fuel loads and vertical and horizontal fuel continuity consistent with the Colorado State Forest Service Defensible Space Guidelines.
 - 4. Removal of trees or vegetation outside the perimeter fence should be minimized to the extent possible and limited to that necessary to achieve compliance with the defensible space and fuel-reduction standards of this section.
 - 5. The applicant or operator of the BESS shall maintain and annually inspect the defensible space and vegetation to ensure compliance with this subsection.
- F. Perimeter Fencing. A BESS facility shall be enclosed by a security fence and gates to restrict access by unauthorized persons.

- G. Height. Under no circumstances shall a facility be more than twenty (20) feet in height.
- H. Sensitive areas. In addition to the avoidance of natural hazards and protection of sensitive lands requirements in section 70-8, to the maximum extent feasible, a facility shall avoid visually sensitive areas such as ridgelines, hilltops, and scenic corridors.
- I. Underground utilities. Power lines must be underground except where the electrical collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network. Proposed transmission and distribution facilities must be identified and included as part of the project application.
- J. Site disturbance. A BESS must be designed to minimize site disturbances. Reestablishment of all disturbed areas, including the construction access, shall maintain the historic drainage patterns and permeable ground cover and must be done to minimize environmental impacts. Temporary and permanent erosion control measures shall be used as necessary to minimize erosion of the site.
 - 1. If the Fire Response Plan requires liquids for firefighting, then the site must include a containment system designed to retain run-off on site in case of emergency release of liquids with the use of water retention liners or similar impervious material.
- K. Annual Inspections. Applicant shall conduct regular on-site inspections of the BESS and submit an annual written report to the director on their condition by the anniversary date of the granting of the permit each year.
- L. Decommissioning.
 - 1. The BESS shall be decommissioned, and the site reclaimed, consistent with the approved Decommissioning Plan;
 - 2. An update of the Decommissioning Plan, including a review of the amount of the financial guarantee based on inflation and the current removal costs, shall be completed every five (5) years, for the duration of operations, and approved by the director. The amount shall be calculated by a mutually-agreed-upon third party with expertise in decommissioning, hired by the BESS owner. The amended and approved Decommissioning Plan shall be provided to the local fire district and OEM;
 - 3. Reasonable efforts shall be made to recycle the BESS and waste;
 - 4. A BESS owner may at any time:
 - a. Proceed with the approved Decommissioning Plan and remove the facility as indicated after thirty (30) days prior notification of the local fire district and OEM, or
 - b. Amend the Decommissioning Plan with director approval and proceed according to the revised plan after thirty (30) days prior notification of the local fire district and OEM.
 - 5. A BESS shall be considered abandoned if the use is discontinued (no energy storage) for a period of more than twelve (12) consecutive months unless a plan has been submitted and approved by the director outlining steps and a schedule for returning the system to service;

6. Decommissioning must be completed within twelve (12) months from the start date of decommissioning;
7. Final reclamation shall not be judged successful and complete sooner than all of the following have occurred: two (2) years after compliance with applicable regulations and the Decommissioning Plan and the director or designee completes a final reclamation inspection. The site must be free of state and county listed noxious weeds, BESS debris, contaminated soil, and equipment;
8. If decommissioning does not proceed in accordance with the Decommissioning Plan, the county shall have the right, but not the requirement, to enter the property and cause the appropriate abandonment and decommissioning measures as determined by the approved Decommissioning Plan and at the BESS owner's expense.

V. **Submittal Requirements for small, large, and utility scale BESS.** In addition to the general land use permit application submittal requirements set forth in section 66-11, applicant shall submit the following documents and materials:

- A. If the applicant is not the surface owner, the name and address of the owner of the property; documentation of surface ownership and copies of documentation showing proof of right of entry by applicant for ingress and egress and installation of all necessary facilities and infrastructure, and other provisions relating to the use of the surface estate as may be appropriate.
- B. Site Layout and Context. A site plan at a scale and format that allows details to be clear and legible (e.g., as separate maps, or by showing some areas at a finer scale) showing:
 1. The location and dimensions (including footprint and height) of all BESS components proposed for the final stage of installation (i.e., accounting for any future augmentation, if applicable), including enclosures or dedicated-use buildings, ancillary structures and electric equipment, buried or above ground wiring, utility connections, temporary and permanent access drives;
 2. Transmission and distribution infrastructure that will be used by the facility and all new transmission and/or distribution infrastructure that will be necessitated by the facility;
 3. Location of access roads and rights-of-way, together with the locations of any easements for access, irrigation, or utilities;
 4. Any significant site features including floodplains, water bodies, and drainage patterns;
 5. Location and proposed use of structures;
 6. Topographic information concerning the direction of drainage at the application site;
 7. Elevation drawings of at least two (2) sides of the facility;
 8. The location of existing dwellings and primary structures on non-participating properties within 400 feet of the property boundary.
- C. Operating plan. A plan for the method of operations, including without limitation:

1. Projected start and completion dates for construction, estimated duration of facility operation, description of equipment used, including horsepower; transportation, generation, and post-operation activities;
 2. A screening plan;
 3. A drainage plan;
 4. A plan for the management and prevention of noxious weeds on the site that complies with all county and state requirements.
- D. Noise Study. A noise study that demonstrates the proposed BESS can meet the requirements of section 70-21. Principal use BESS must comply with light industrial standards. Accessory use BESS must comply with the stricter of the noise standards applicable to the principal land use or light industrial standards.
- E. Preliminary Equipment Specification Sheet. The proposed BESS components, inverters, and associated electrical equipment that are to be installed.
- F. System Maintenance Plan. A detailed maintenance schedule covering all affected equipment and the activities performed as outlined in the NFPA 855 Standard for the Installation of Stationary Energy Storage Systems
- G. Compliance Statement. Confirmation that the facility complies with the most current adopted editions of NFPA 855 – Standard for the Installation of Stationary Energy Storage Systems and the International Fire Code section 1207 – Electrical Energy Storage Systems at the time of application submittal.
- H. Wildfire mitigation assessment. If the BESS is in an area identified as high or greater burn probability based upon the Colorado State Forest Service – Colorado Wildfire Risk Assessment, an explanation of wildfire mitigation efforts that will be undertaken during the construction, operational, and decommissioning phases.
- I. Fire and Emergency Response Plans. An Emergency Response Plan and a Fire Response Plan developed in consultation with the local fire district and OEM, at its discretion, shall be submitted and, in addition to requirements in NFPA 855, contain the following:
1. Emergency Response Plan (ERP). The ERP shall include:
 - a. An identification of contingencies that would constitute a safety or security emergency (fire emergencies are to be addressed in a separate Fire Response Plan);
 - b. Emergency response measures, evacuation control measures, and community notification measures by contingency;
 - c. An identification of potential approach and departure routes to and from the facility site for police, fire, ambulance, and other emergency vehicles;
 - d. A commitment to review and update the ERP with the local fire district and OEM, at its discretion, at least once every three (3) years;
 - e. An analysis of whether plans to be implemented in response to an emergency can be fulfilled by existing local emergency response capacity, and identification of any specific equipment or training deficiencies in local emergency response capacity;

- f. A Tier II report or other hazardous materials documentation acceptable to the local fire district and OEM;
 - g. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions;
 - h. Procedures for inspection and testing of associated alarms, interlocks, and controls;
 - i. Procedures to be followed in response to notifications from the BESS management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure;
 - j. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department or district, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire;
 - k. Procedures for dealing with BESS equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged BESS equipment from the facility;
 - l. Other information the applicant, local fire district, or OEM finds relevant.
2. Fire Response Plan (FRP). The FRP shall include:
- a. A description of all on-site equipment and systems provided to prevent or handle fire emergencies;
 - b. A description of all contingency plans to be implemented in response to the occurrence of a fire emergency, including evacuation control measures and community notification measures;
 - c. A commitment to offer to conduct, or provide funding to conduct, site-specific training drills with the local fire district and the OEM, as its discretion, before commencing operation, and at least once per year while the facility is in operation, at the expense of the project owner. Training should familiarize the local fire district, OEM, and other first responders with the project, hazards, procedures, and current best practices;
 - d. A commitment to review and update the FRP with the local fire district and the OEM, as its discretion, at least once every three (3) years;

- e. A commitment to replace or compensate fire districts and first responders for non-disposable gear, including turnout gear, that was destroyed or rendered unusable due to response to a fire emergency;
 - f. An analysis of whether plans to be implemented in response to a fire emergency can be fulfilled by existing local emergency response capacity. The analysis should include identification of any specific equipment or training deficiencies in local emergency response capacity and a plan to mitigate these deficiencies;
 - g. Identification of the nearest water source;
 - h. Other information the applicant, local fire district, or OEM finds relevant.
- 3. Copies of Fire and Emergency Response Plans shall be maintained at an approved on-site location accessible to facility and emergency personnel, and provided to the local fire district and OEM.
- J. Decommissioning Plan. The Decommissioning Plan shall, in addition to requirements for Decommissioning Plans in NFPA 855, include:
 - 1. Contact information for all parties involved (e.g., landowner, developer, utilities, etc.);
 - 2. The anticipated life of the BESS;
 - 3. A narrative description of the activities to be accomplished for removing the BESS from service, including who will perform that activity and at what point in time, for complete physical removal of all BESS components, structures, equipment, security barriers, and transmission lines from the site. The description shall also include hazardous material use and removal from the site based upon what is known at the time the application is filed;
 - 4. A projected timeline for decommissioning the BESS;
 - 5. A description of efforts to be made to recycle the BESS and waste;
 - 6. A listing of any contingencies for removing an intact operational BESS, and for removing a BESS that has been damaged by a fire or other event;
 - 7. Cost of Decommissioning and Reclamation. The projected decommissioning costs for BESS removal and site reclamation and how said estimate was determined by a mutually-agreed-upon third party with expertise in decommissioning, hired by the applicant, including the following costs:
 - a. Labor, equipment, transportation, and disposal costs associated with the removal of all facility components from the facility site;
 - b. Reclamation;
 - c. Decommissioning and reclamation activity management, monitoring, site supervision, and site safety costs;
 - d. Any other costs, including administrative costs, associated with the decommissioning and reclamation of the facility site;

- e. Costs of outside technical and legal experts to assist with any phase of inspection and determination of compliance with the Decommissioning Plan.
- 8. An update of the Decommissioning Plan, including a review of the amount of the financial security based on inflation and the current removal costs, calculated by a mutually-agreed-upon third party with expertise in decommissioning, hired by the applicant, shall be completed every five (5) years, for the duration of operations, and approved by the director. The amended and approved Decommissioning Plan shall be provided to the local fire district and OEM.