



# GENESEE COUNTY PLANNING BOARD REFERRALS NOTICE OF FINAL ACTION

GCDP Referral ID

**T-04-ALA-06-24**

Review Date

**6/13/2024**

Municipality  
Board Name  
Applicant's Name  
Referral Type  
Variance(s)  
Description:

**ALABAMA, T.**

**TOWN BOARD**

**Alabama Town Board**

**Zoning Text Amendments**

**Zoning text amendment to enact a moratorium for commercial battery energy storage systems.**

Location  
Zoning District

**Entire Town of Alabama**

**All Zoning Districts**

**PLANNING BOARD RECOMMENDS:**

**APPROVAL**

**EXPLANATION:**

**The proposed moratorium should not pose significant county-wide or inter-community impacts. The moratorium appears to meet the intent of the municipality to have enough time to study and draft changes to their Zoning Law to protect the health, safety and welfare of the community.**

Director

June 13, 2024

Date

If the County Planning Board disapproved the proposal, or recommends modifications, the referring agency shall NOT act contrary to the recommendations except by a vote of a majority plus one of all the members and after the adoption of a resolution setting forth the reasons for such contrary action. Within 30 days after the final action the referring agency shall file a report of final action with the County Planning Board. An action taken form is provided for this purpose and may be obtained from the Genesee County Planning Department.

**SEND OR DELIVER TO:**

GENESEE COUNTY DEPARTMENT OF PLANNING  
3837 West Main Street Road  
Batavia, NY 14020-9404  
Phone: (585) 815-7901



**DEPARTMENT USE ONLY:**  
GCDP Referral # T-04-ALA-06-24

**\* GENESEE COUNTY \*  
PLANNING BOARD REFERRAL**

RECEIVED  
Genesee County  
Dept. of Planning  
5/16/2024

Required According to:  
**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**  
(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**

Board(s) Town of Alabama  
Address 2218 Judge Rd  
City, State, Zip Oakfield NY 14125  
Phone (585) 948 - 9341 Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone ( ) - Ext. \_\_\_\_\_ Email \_\_\_\_\_

MUNICIPALITY:  City  Town  Village of Alabama

**3. TYPE OF REFERRAL:** (Check all applicable items)

- |   |  |                                      |
|---|--|--------------------------------------|
| <input type="checkbox"/> Area Variance      | <input type="checkbox"/> Zoning Map Change                 | Subdivision Proposal                 |
| <input type="checkbox"/> Use Variance       | <input checked="" type="checkbox"/> Zoning Text Amendments | <input type="checkbox"/> Preliminary |
| <input type="checkbox"/> Special Use Permit | <input type="checkbox"/> Comprehensive Plan/Update         | <input type="checkbox"/> Final       |
| <input type="checkbox"/> Site Plan Review   | <input checked="" type="checkbox"/> Other: _____           |                                      |

**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**

A. Full Address Town of Alabama  
B. Nearest intersecting road \_\_\_\_\_  
C. Tax Map Parcel Number \_\_\_\_\_  
D. Total area of the property \_\_\_\_\_ Area of property to be disturbed \_\_\_\_\_  
E. Present zoning district(s) \_\_\_\_\_

**5. REFERRAL CASE INFORMATION:**

A. Has this referral been previously reviewed by the Genesee County Planning Board?  
 NO  YES If yes, give date and action taken \_\_\_\_\_  
B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law  
\_\_\_\_\_  
C. Please describe the nature of this request Battery storage moratorium.  
\_\_\_\_\_  
\_\_\_\_\_

**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Local application | <input checked="" type="checkbox"/> Zoning text/map amendments | <input type="checkbox"/> New or updated comprehensive plan |
| <input type="checkbox"/> Site plan                    | <input type="checkbox"/> Location map or tax maps              | <input type="checkbox"/> Photos                            |
| <input type="checkbox"/> Subdivision plot plans       | <input type="checkbox"/> Elevation drawings                    | <input type="checkbox"/> Other: _____                      |
| <input checked="" type="checkbox"/> SEQR forms        | <input type="checkbox"/> Agricultural data statement           |  |

**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)

Name Robert Crossen Title Supervisor Phone (585) 813 - 8700 Ext. \_\_\_\_\_  
Address, City, State, Zip 2218 Judge Rd Oakfield NY 14125 Email alabamasupervisor@gmail.com

# Short Environmental Assessment Form

## Part 1 - Project Information

### Instructions for Completing

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>			
Town of Alabama			
Name of Action or Project: Battery Storage Moratorium			
Project Location (describe, and attach a location map): Town of Alabama			
Brief Description of Proposed Action: Battery storage moratorium.			
Name of Applicant or Sponsor: Town of Alabama		Telephone: 585-948-9341	
		E-Mail: alabamasupervisor@gmail.com	
Address: 2218 Judge Rd			
City/PO: Oakfield		State: NY	Zip Code: 14125
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO <input checked="" type="checkbox"/>
			YES <input type="checkbox"/>
3.a. Total acreage of the site of the proposed action? _____ acres			
b. Total acreage to be physically disturbed? _____ acres			
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres <span style="float: right;"><i>Town wide</i></span>			
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input checked="" type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input checked="" type="checkbox"/> Forest <input checked="" type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	N/A
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?  If No, describe method for providing potable water: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?  If No, describe method for providing wastewater treatment: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Is the proposed action located in an archeological sensitive area?	<input type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input checked="" type="checkbox"/> Shoreline <input checked="" type="checkbox"/> Forest <input checked="" type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input checked="" type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	N/A
16. Is the project site located in the 100 year flood plain?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	N/A
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____	<input type="checkbox"/> NO <input type="checkbox"/> YES		

<p>18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?</p> <p>If Yes, explain purpose and size: _____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?</p> <p>If Yes, describe: _____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?</p> <p>If Yes, describe: _____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p><b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b></p>		
<p>Applicant/sponsor name: <u>Town of Alabama</u></p>		<p>Date: <u>05/16/24</u></p>
<p>Signature: <u><i>Robert</i></u></p>		

Agency Use Only [If applicable]

Project:

Date:

05/16/24

## *Short Environmental Assessment Form Part 2 - Impact Assessment*

**Part 2 is to be completed by the Lead Agency.**

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**PRINT FORM**

Project:

Date:

05/16/24

### Short Environmental Assessment Form Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Town of Alabama

Name of Lead Agency

Date

Robert Crossin

Print or Type Name of Responsible Officer in Lead Agency

Supervisor

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

PRINT FORM

The Town Board of the Town of Alabama does hereby enact the Town of Alabama Moratorium on Battery Energy Storage Systems Law. This Local Law shall impose a moratorium on applications or proceedings for applications for, the review of applications for, or the issuance of approvals or permits for the construction of any Battery Energy Storage System, as defined herein.

The capitalized terms in the foregoing sentence, and as used throughout this local law, shall have the following meanings ascribed to them:

**Commercial Battery Energy Storage System-** One or more devices, assembled together, capable of storing energy produced by a commercial wind or solar energy conversion system, in order to supply electrical energy at a future time, having an aggregate energy capacity greater than 600kWH or comprised of more than one storage battery technology in a room or enclosed area.

**Applicant-** All landowners and all those claiming through or on behalf of the owner(s), whether by license, lease, easement, contract, or by owner's designation as an agent for purposes of making any application or any land use review or approval, whether for a permit or otherwise.

**Section 2. Authorization, Purpose and Intent.**

Pursuant to the authority and provisions of the New York State Constitution, and Section 10 of the Municipal Home Rule Law, and the statutory powers vested in the Town of Alabama to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board (the "Board") of the Town of Alabama hereby declares a moratorium on applications or proceedings for applications for, the review of applications, or the issuance of approvals or permits for the construction of Commercial Battery Energy Storage Systems within the Town of Alabama (the "Town"), lasting through **December 31, 2024**.

This moratorium will allow time for Town officials to review, clarify, amend, and update the Town's regulations for commercial battery energy storage systems, particularly with regard to where such development may be located in the Town. Additionally, this moratorium will allow the Town to adopt such other regulations as may be necessary to promote and preserve the health, safety and welfare of the Town and its citizens.

**Section 3. Scope of Controls.**

During the effective period of this Local Law:

- A. Neither the Town Board nor the Planning Board shall conduct any review or consider or grant any special permit or other approval that will result in the approval, establishment or construction of any Battery Energy Storage System within the Town.
- B. To the extent permitted by law, this moratorium shall supersede all relevant provisions of the New York State Town Law, the New York State Building Code, any relevant Town local law and any other applicable law, rule or regulation, that may be in conflict herewith. If any ambiguity or conflict exists, this local law shall govern and the presumption shall in each case be that the moratorium is in effect.

**Section 4. No Consideration of New, Revised, or Renewal Applications.**

No new, revised, or renewal applications shall be accepted for filing, review, or consideration, and no site plans, authorizations, special permits, permits, building permits, variances, waivers or other approvals that purport to allow or advance the development, siting, or construction of any Battery Energy Storage System shall be undertaken, reviewed, considered or issued by any board, officer, employee or agent of the Town, except as specifically set forth in Section 10 of this local law. Nor shall any language or term in this moratorium effect, or be construed to result in, any default approval, and any matter now pending shall be stayed in place during the pendency of this moratorium, with all deadlines or other timelines suspended for the same number of days that this moratorium is in effect.

**Section 5. Term.**



The moratorium imposed by this Local Law shall be in effect until December 31, 2024 starting from the effective date of this Local Law. This moratorium may be extended, or rescinded or removed, by local law.

**Section 6. Location.**

The moratorium imposed by this Local Law shall apply to the territorial limits of the Town of Alabama. Any dispute as to whether a property is encompassed within the geographic area detailed above shall be resolved by reference to the official tax maps of Genesee County and the official New York corporate boundary maps for the Town of Alabama.

**Section 7. Penalties.**

The following provisions shall apply generally, and the violation of this Local Law shall allow and permit enforcement in any one or more of the following manners:

- A. When any term, provision, or requirement of this Local Law is violated the Enforcement Officer may issue a written notice of violation to the Applicant (or other Person in violation hereof). The notice of violation shall contain; (i) the name and address of the Person alleged to have violated this Local Law; (ii) the address, when available, or a description of the building, structure or parcel upon which the violation occurred or is occurring; (iii) a brief statement specifying the nature of the violation; (iv) a statement of the fine or penalty that may or could be assessed against any Person to whom the notice of violation is directed; and (v) a clear statement identifying whether the notice commences or may commence a civil or criminal proceeding. The failure to comply with a written notice of violation by correcting the violation is in itself a separate violation of this Local Law and may be further enforced as such. In addition, Executive Law § 382 may be duly enforced separately from any such notice, and both notices may take the form of a single notice which must, in addition to the above, contain the information and be served as required by said § 382.
- B. The Enforcement Officer may issue stop work orders for violations of this Local Law. Any Person receiving a stop work order shall be required to halt all clearing, grading, construction, and any other or related activities, until the Enforcement Officer or a court of competent jurisdiction allows work to re-commence.
- C. The Town may also maintain actions or proceedings in the name of the Town in a court of competent jurisdiction to compel compliance with, restrain by injunction the violation of any provision or requirement of this Local Law, including to prevent, enjoin, correct, enforce, or abate any violation of, or non-conformance with, any provision or requirement of this local law or the terms and conditions set forth in any waiver or approval issued hereunder. In any such proceeding the Town shall not be required to: (i) prove the lack of an adequate remedy at law; or (ii) to post a bond or other undertaking as a condition or requirement for any preliminary, interim, or permanent restraining order or injunction. No such action or proceeding shall commence without the appropriate authorization from the Town Board.
- D. This Local Law may be enforced civilly or criminally by seeking fines, penalties, and like punishments to deter future violations and sanction offenders. All provisions of New York law and process generally applicable to misdemeanors shall apply to any criminal proceeding brought upon any violations of this Local Law, including for purposes of conferring jurisdiction. The following civil and criminal fines and penalties shall apply to any violation of the requirements or terms of this Local Law:
  1. For a first offense, any Person that violates any of the provisions of this Local Law shall be (i) guilty of a violation, and subject to a fine of not more than \$500, or (ii) subject to a civil penalty of not more than \$500 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

2. For a second offense, being any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any violation of this Local Law, a Person shall be (i) guilty of an unclassified misdemeanor and subject to a fine of not more than \$2,500, or (2) subject to a civil penalty of not more than \$2,500 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.
  3. The above fines are in addition to any penalty, fine, or sentence allowed or impossible pursuant to said Executive Law § 382.
- E. Upon any violation of this Local Law by an Applicant or any Person, the Town may, and the Enforcement Officer shall, decline and refuse to issue any approvals, endorsements, certifications, building permits, certificates of occupancy, certificates of compliance, and any similar or other document or approval until the Applicant or Person rectifies and cures such violation.
- F. Any Person violating this Local Law may be required to restore land to its prior or undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid. In addition, the Town may commence any one or more civil proceedings in the Town Court, or any other court or tribunal of competent jurisdiction, to recover the costs of such restoration.
- G. For purposes of this Local Law the Justice Court of the Town is hereby vested and imbued with jurisdiction to: (i) issue administrative or other warrants in compliance with the New York Criminal Procedure Law and administrative codes of the State of New York; and (ii) hear and adjudicate allegations relating to the criminal or civil violation of this Local Law and to thereafter, if appropriate, impose any fine, penalty, or sanction.
- H. Criminal matters arising in relation to enforcement matters under this local law shall be and be classified as offenses per the following guidelines: (i) first offenses shall be deemed violations; (ii) second offenses shall be deemed unclassified misdemeanors; and (iii) violations of Executive Law § 382 shall be classified as set forth by New York State in such § 382.
- I. No remedy or penalty specified in this local law shall be the exclusive remedy available to the Town to address any violation of, or non-compliance with, the requirements of this local law. The rights and remedies of the Town are independent of each other and cumulative. The grant of any right or remedy in this Local Law is in addition to, and not in limitation of or in substitution for any other right or remedy of the Town, whether sounding in law, equity, or admiralty. Further, the election by the Town of any one right or remedy does not forestall or prevent the simultaneous or future election of any other right or remedy, whether relating to enforcement, sentencing, or otherwise.

### **Section 8. Exemptions and Non-Conforming Uses.**

Notwithstanding any provision hereof to the contrary, any Battery Energy Storage System that has already been issued all necessary approvals or permits from the Town Board or the Planning Board (the "Town Approvals") may continue such projects and such support activities that are being conducted in the Town as of the effective date of this Local Law, so long as such supporting activities are in all respects being conducted in accordance with all applicable laws and regulations and any conditions of approval, including all Town Approvals. Such limited right to proceed when Town Approvals have been issued shall include the right to apply for and obtain a building permit, so long as the same is or are in conformance with any existing Town Approvals.

Any expansion of a lawful, pre-existing, non-conforming use shall not be grandfathered under this Section and instead shall in all respects be prohibited as contemplated by Section 3 hereof. "Grandfathered" and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use whether above or below ground, and no such right shall be deemed, construed, or implied to exist.

**Section 9. Validity.**

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

**Section 10. Hardship.**

The Town Board of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a waiver application of the provisions of this Local Law by persons aggrieved hereby.

No such waiver shall be granted by the Town Board without a showing by the Applicant that applicable regulations and restrictions have caused unnecessary hardship.

- A. **Unnecessary Hardship.** In order to prove such unnecessary hardship the Applicant is required to demonstrate to the Town Board that, with respect to every permitted use under Town land use, each of the following four criteria is satisfied: (i) the Applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the neighborhood; and (iv) the alleged hardship has not been self-created.
- B. **Reasonable Rate of Return.** In evaluating whether the Applicant can realize a reasonable rate of return, the Town Board must examine whether the entire original or expanded property holdings of the Applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No waiver shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the Applicant has clearly demonstrated by detailed "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the area of the Town the property is located.
- C. **Unique Hardship.** No waiver shall be granted unless, in addition to satisfying all other applicable provisions of the law and this Law, the Town Board finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.
- D. **Essential Character of the Neighborhood.** In making its determination, of whether the proposed development project will alter the essential character of the neighborhood, the Town Board shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential and agricultural character of the Town, (ii) its irreplaceable recreation, historic, and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the Applicant will engage in the type of development that will result in degradation to the air quality, water quality or scenic or other natural resources of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Board shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.
- E. **Self-Created Hardship.** The Town Board may find that the Applicant suffers from a self-created hardship in the event that the Board finds that (i) the Applicant's inability to obtain a reasonable

return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the Applicant previously divided the property and is left with only a portion which suffers from some unique conditions for which relief is sought and which did not apply to the parcel as a whole; (iii) when the Applicant purchased the property, he or she knew or should have known the property was subject to the land use restrictions; or (iv) that the Applicant transferred or obtained property rights with only a unilateral expectation of development or investment character, and it shall be material to this question to examine the degree to which opposed to in fee (actual acquisition of fee simple title), and whether the anticipated income, profits, or receipts were conditional, contingent, or guaranteed.

If the Town Board grants a waiver from the provisions of this Local Law to the Applicant, the Applicant shall be required to comply with all provisions of the Town's then applicable land use regulations and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any waiver that is granted shall grant only the minimum waiver that the Town Boards deems necessary and adequate to address the unnecessary hardship proven by the Applicant, and at the same time preserve and protect the character of the neighborhood and health, safety, and welfare of the community.

**Section 11. Effective Date.**

This Local Law shall take effect immediately.

## Felipe Oltramari

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**Subject:** FW: Town of Alabama Commercial Energy Battery Storage System Moratorium

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**From:** Robert Crossen <alabamasupervisor@gmail.com>

**Sent:** Wednesday, June 12, 2024 1:30 PM

**To:** Felipe Oltramari <Felipe.Oltramari@geneseeny.gov>

**Cc:** Rebecca Borkholder (alabamaclerk@rochester.rr.com) <alabamaclerk@rochester.rr.com>; Mark S. Boylan Esquire (mboylan@boylanlawoffice.com) <mboylan@boylanlawoffice.com>; Drew Reilly <areilly@wendelcompanies.com>

**Subject:** Town of Alabama Commercial Energy Battery Storage System Moratorium

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**Felipe,**

**Please see the addendum to our referral below.**

**We appreciate your catching that error.**

**Robert Crossen**

**Alabama Town Supervisor**

**Commercial Battery Energy Storage System-** One or more devices, assembled together, capable of storing energy ~~produced by a commercial wind or solar energy conversion system,~~ **from** any source in order to supply electrical energy at a future time, having an aggregate energy capacity greater than 600kWH or comprised of more than one storage battery technology in a room or enclosed area.