



King County
Permitting Division
Department of Local Services
919 Southwest Grady Way, Suite 300
Renton, WA 98057
206-296-6600 TTY Relay: 711
www.kingcounty.gov

MEMORANDUM

Date: November 8, 2023

To: Jake Tracy, Principal Legislative Analyst, Council Central Staff

From: Robin Proebsting, Legislative/Policy Analyst, DLS-Permitting

Re: State Environmental Policy Act (SEPA) Threshold Determination of Non-significance (DNS) for a non-project action identified as: Proposed Ordinance 2023-0263 - Battery Energy Storage System (BESS) Regulations

Jake,

As a SEPA official within the Permitting Division of the Department of Local Services, I was tasked with performing the SEPA review and threshold determination under SEPA for Proposed Ordinance 2023-0263 - Battery Energy Storage System (BESS) Regulations.

As part of that process, I reviewed the checklist, proposed ordinance, and existing codes and policies. A DNS was issued and published on September 27, 2023, with a comment period ending October 18, 2023.

I received input from 192 commenters. Comments covered the following issues regarding future BESS facilities constructed under the standards in this proposed ordinance:

- Concerns about potential safety impacts due to risk of fire, explosion, and resulting toxic gases;
- Concerns about noise;
- Concerns about impacts to wildlife; and
- Concerns about potential pollution being released into Soos Creek by future facilities.

I also received comments outside the scope of this SEPA review, including comments regarding:

- Concerns about project CDUP23-0003, a conditional use permit application for a BESS facility, which has been cancelled and which is no longer under review; and
- Requests for a public hearing on BESS facilities.

Based on consultation with the Prosecuting Attorney's Office, Permitting staff, and Department of Ecology published guidance, I have concluded that the DNS remains the appropriate determination for this proposed non-project action. This conclusion is based on the mitigating measures provided by existing County regulations and the proposed ordinance, both of which address the issues raised in public comment listed above. Mitigating measures, noted in the SEPA Checklist, include:

- International Building Code and SEPA : The SEPA Checklist notes that: "In addition to the specific safety measures in the proposed ordinance, the 2021 International Building Code, and amendments thereto adopted by the State, include a number of specific provisions relating to energy storage systems. These include permit requirements, hazard mitigation analyses, pre-approval equipment testing and documentation, a two-hour fire-resistant wall in structures containing BESS, a hazardous exhaust system, maximum allowable quantities of batteries in a single area, explosion, spill, and thermal runaway controls, and other requirements. These measures are all aimed at mitigating the possibility of fire and/or subsequent release of hazardous materials. Additionally, unless exempted by state or local law, individual BESS projects would be subject to the SEPA process, through which mitigation measures could be imposed." These measures directly address fire and explosion risk by requiring measures that would help prevent and attenuate fire or explosion from occurring. These measures would also help prevent secondary effects, such as the release of toxic gases and ensuing harm to wildlife or water bodies.
- Existing noise regulations in King County Code Title 12: King County Code already sets limits on the maximum permissible sound levels of environment sound. The SEPA Checklist notes that: "Under current code and under the proposed ordinance, BESS are subject to the County's noise regulations in K.C.C. 12.86 and would be required to ensure that noise levels do not exceed the maximums prescribed in K.C.C. 12.86.110. and 12.86.120." There is one possible exception to the sound limits imposed by K.C.C. 12.86: Some BESS could be excepted from these standards at nighttime if a BESS were integrated with an electrical substation on the same site, as substations are exempt from those restrictions pursuant to K.C.C. 12.85.120.A.
- Proposed ordinance requirements: In addition to regulatory standards aimed at reducing noise, fire, and explosion risk, which would prevent potential impacts, the proposed ordinance would impose regulatory measures to further mitigate potential impacts. These measures include:
 - Requiring financial coverage in case of fire at privately owned BESS and Consumer-scale BESS with 1 MW or more of capacity to cover for the

maximum damages that might occur from an explosion resulting from a worst-case release, as defined in the 40 C.F.R. Sec. 68.3, of flammable gases and flammable liquids, which would help ensure that any environmental damage or contamination is promptly addressed. Further, the process of analyzing what a worst-case release would be for a given facility might lead to design modifications that reduce explosion impacts or potential.

- Requiring that applicants provide a decommissioning plan for facility closure detailing the hazardous substances that will be handled or generated in the facility; the range of potential release volumes that could require cleanup; and whether such releases have the potential to contaminate groundwater or surface waters on or adjacent to the site. Developing this decommissioning plan might lead to decisions to reduce potential hazardous chemicals used at a facility.
- Requiring all BESS, as well as Consumer-scale BESS over 1 megawatt (MW), to maintain a buffer from vegetation and be separated from vehicle-accessible areas by barriers. These measures are intended to decrease the likelihood of a fire and subsequent release of gas.
- Requiring a conditional use permit for BESS in R zones. A criterion for approval of conditional use permits is that the applicant must demonstrate that the proposed use is not in conflict with the health and safety of the community, which enables the County to impose conditions to mitigate impacts.
- Imposing larger setbacks from interior property lines than is required under current code.
- Limiting the size of BESS in A and F zones.

No further action as it relates to this SEPA review and the DNS is necessary at this time.

I have included a copy of the final SEPA checklist, Threshold Determination, newspaper affidavit of publishing.