

CAUSE NO. 25-18363

VICTOR HOLLENDER, BRUCE
NEITZKE, ESTHER SCHNEIDER, and
SARAH RIVAS

Plaintiffs,

v.

ROGERS DRAW ENERGY STORAGE,
LLC, B&CWR, INC., d/b/a CACTUS
CONSTRUCTION

Defendants.

IN THE DISTRICT COURT OF

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

**DEFENDANT ROGERS DRAW ENERGY STORAGE, LLC'S PLEA TO THE
JURISDICTION, GENERAL DENIAL, COUNTERCLAIMS,
AND REQUEST FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

Defendant Rogers Draw Energy Storage, LLC ("Rogers Draw") files this Plea to the Jurisdiction, and subject to and without waiving same, General Denial and Affirmative Defenses to Gillespie County's (the "County" or "Intervenor") Petition in Intervention and Application for Injunction Relief (Intervenor's "Petition"). Rogers Draw further asserts the following counterclaims and request for injunctive relief against Intervenor.

PLEA TO THE JURISDICTION

Intervenor's claims seek preemptive judicial intervention based on hypothetical future regulatory noncompliance and speculative harm, rather than any present injury, existing violation, or finalized administrative action, and therefore fall outside this Court's subject matter jurisdiction. In other words, the Court lacks subject matter jurisdiction over Intervenor's claims because there is no ripe case or controversy implicating Rogers Draw and Intervenor. "Ripeness is a jurisdictional prerequisite to suit." *Zaatari v. City of Austin*, 615 S.W.3d 172, 183 (Tex. App.—

Austin 2019, pet. denied). “[A]voiding premature litigation prevents courts from entangling themselves in abstract disagreements over administrative policies while at the same time serving to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 443 (Tex. 1998) (citation modified). Therefore, ripeness is a “threshold issue that implicates subject matter jurisdiction, and like standing, emphasizes the need for a concrete injury for a justiciable claim to be presented.” *Id.* at 442. The principles of ripeness are grounded in the constitutional requirement that courts are prohibited from issuing advisory opinions, which arises from the separation of powers doctrine. *See* Tex. Const. art. II, § 1, art. V, § 8. When determining whether a claim is ripe, “courts must consider whether, *at the time the suit is filed*, the facts are sufficiently developed so that an injury has occurred or is likely to occur, rather than being contingent or remote.” *Patel v. Tex. Dep’t of Licensing & Regulation*, 469 S.W.3d 69, 78 (Tex. 2015) (citation modified). Thus, a case is not ripe if it involves uncertain or contingent future events that may not occur as anticipated. *Id.*

Here, Intervenor is asking this Court to issue an advisory opinion. Intervenor does not allege that Rogers Draw is *currently* violating any code or regulation. Rather, Intervenor’s claims are based on the assertion that Rogers Draw, somehow, *will* violate said codes and regulations *at some unspecified point in the future*. As such, Intervenor’s claims are impermissibly premised on “contingent and remote” assumptions, rendering them unripe.

To date, Rogers Draw is not “maintaining” a “building,” so it cannot be in violation of Section 343.011 of the Texas Health and Safety Code. *See* Intervenor’s Pet. at ¶ 37. It cannot be in violation of the NFPA codes because it has not constructed or installed an energy storage system. *Id.* at ¶ 45. And it cannot be in violation of Chapter 232 of the Local Government Code because it

has not constructed the alleged “industrial facilities.” *Id.* at ¶ 53. Likewise, Rogers Draw cannot be in violation of the Gillespie County Flood Damage Prevention Ordinance adopted on July 28, 2025, because no development has occurred within a regulated floodplain, no structure has been constructed or maintained, and no floodplain development permit requirement has been triggered. The Ordinance applies only to existing or proposed development affecting designated flood hazard areas, and Intervenor does not allege—nor could it—that Rogers Draw has placed any structure, fill, or improvement within a floodplain subject to regulation. Moreover, the Flood Damage Prevention Ordinance did not exist at the time Rogers Draw submitted its development plans and therefore cannot serve as the basis for a present or prospective violation. As such, because the Intervenor has not and cannot point to an actual, existing violation, this matter is not ripe.

Because Intervenor alleges no present injury, no existing violation of law, and no finalized administrative action, its claims are constitutionally non-justiciable and must be dismissed for lack of subject matter jurisdiction.

GENERAL DENIAL

Subject to and without waiving its Plea to the Jurisdiction, and as permitted by Texas Rule of Civil Procedure 92, Rogers Draw asserts a general denial to all allegations and claims contained in the Petition, and to any future supplemental and/or amended pleadings, and demands that Intervenor be required to prove strictly all allegations and claims against Rogers Draw set forth therein by at least a preponderance of evidence, as required by the Constitution and laws of the State of Texas. Rogers Draw further denies that Intervenor is entitled to any temporary or permanent injunction and reserves all defenses and rights related to such relief.

AFFIRMATIVE DEFENSES

Under Texas Rule of Civil Procedure 94, Rogers Draw asserts that Intervenor’s claims

are barred in whole or in part based on one or more of the following potential defenses:

- Intervenor has failed, in whole or in part, to state a claim against Rogers Draw upon which relief may be granted.
- Intervenor's claims are barred because they are based on speculative and hypothetical harm that may or may not occur. Intervenor alleges no existing condition, no violated state, and no imminent event of harm.
- Intervenor's claims are barred because Rogers Draw proposed construction complies, and will comply, with all relevant codes, permits, and regulatory standards designed to prevent nuisance and hazards.
- Rogers Draw has conducted itself in conformity with all applicable laws, regulations, and zoning requirements.
- Intervenor's claims for injunctive relief are barred because they have failed to demonstrate irreparable harm.
- Intervenor's claims fail because Intervenor lacks standing for one or more of its causes of action.
- Intervenor is equitably estopped from asserting its claims.
- Intervenor's actions constitute impermissible regulatory takings.

By asserting potential affirmative defenses, Rogers Draw does not take on the burden of proof regarding any of Intervenor's claims or any potential defenses unless otherwise required by law. Rogers Draw reserves the right to amend its answer and defenses and to raise any and all defenses that may become apparent in the course of this action as it obtains further information about claims alleged in Intervenor's Petition.

ROGERS DRAW'S COUNTERCLAIMS

Rogers Draw assert the following counterclaims against the County.

BACKGROUND

A. The Project.

1. Rogers Draw is a planned 145 MW energy storage system proposed for Gillespie County, Texas (the “Project” or “Rogers Draw”). This Project bolsters the capacity for providing reliable and consistent energy to a region that experiences a 97% day-over-day volatility in energy demand compared to all other ERCOT substations. Rogers Draw will not emit any smell, smoke, or noise pollution typically associated with industrial facilities. There will also be no discernible impacts on traffic during operation. The 88-container facility will only occupy less than half of the land parcel to preserve a buffer minimizing potential view impacts. As the Project has yet to be operational, neither Plaintiffs nor the County alleges any current interference; all alleged impacts are prospective in nature.

2. Neighboring transmission lines provide reliable energy to Gillespie, Kerr, and Kendall Counties, which include over 120,000 homes. This Project will maximize the region’s reliability by providing reliable energy to the Texas Hill Country and beyond.

B. The Project’s Benefits.

3. Texas has prioritized development of energy storage statewide to avoid future grid outages like the one that left many Texas residents without power for three days during the winter freeze in 2021. The proximity to the Rogers Draw BESS facility will allow for efficient transmission in and around Gillespie County, enhancing grid reliability by providing power to the grid in the event of power loss.

4. Energy storage projects provide back-up power to homes and businesses, limit

power outages, make the electrical grid more reliable, and enable communities to run on clean, affordable energy. Energy storage facilities consist of rows of rechargeable batteries housed in self-contained, interconnected storage units and operate by drawing surplus energy from the local power grid during periods of low usage and storing it for later distribution back into the grid during peak demand. By storing energy when the demand for electricity is low and discharging that energy later during high demand, energy storage can reduce costs for utilities and save families and businesses money. This also means that these facilities reinforce the local power grid not only on a daily or routine basis, but also during emergencies when demand is especially high or when electrical transmission from outside the local grid is limited.

5. The Project is expected to create construction jobs as well as continuous operations and maintenance jobs over its lifetime. Rogers Draw estimates the Project will contribute \$13,600,000 in revenue to the community through taxes. On top of these economic benefits, Rogers Draw proudly invests heavily in the communities in which it operates and believes these communities know best where to spend these dollars. Examples of how Rogers Draw has already invested in the community include the following:

- Rogers Draw made a donation for Cowboy Gala through Harper Community Park Association.
- Rogers Draw donated food to support fire fighters during the Crabapple Fire.
- Rogers Draw made a donation towards Kerr County Flood efforts.

Rogers Draw has also offered to: (1) purchase critical equipment for the Harper Volunteer Fire Department; (2) assist in the Rodeo Area roofing efforts through Harper Community Park Association; (3) support a Harper ISD school playground; and (4) contribute towards Harper ISD's 501c3.

C. The Project's Safety Measures.

6. Just like other energy sources, all energy storage projects must meet rigorous codes and standards at the federal, state, and local level to be permitted to construct, operate, and maintain the project, and Rogers Draw's standards exceed requirements in multiple key aspects.

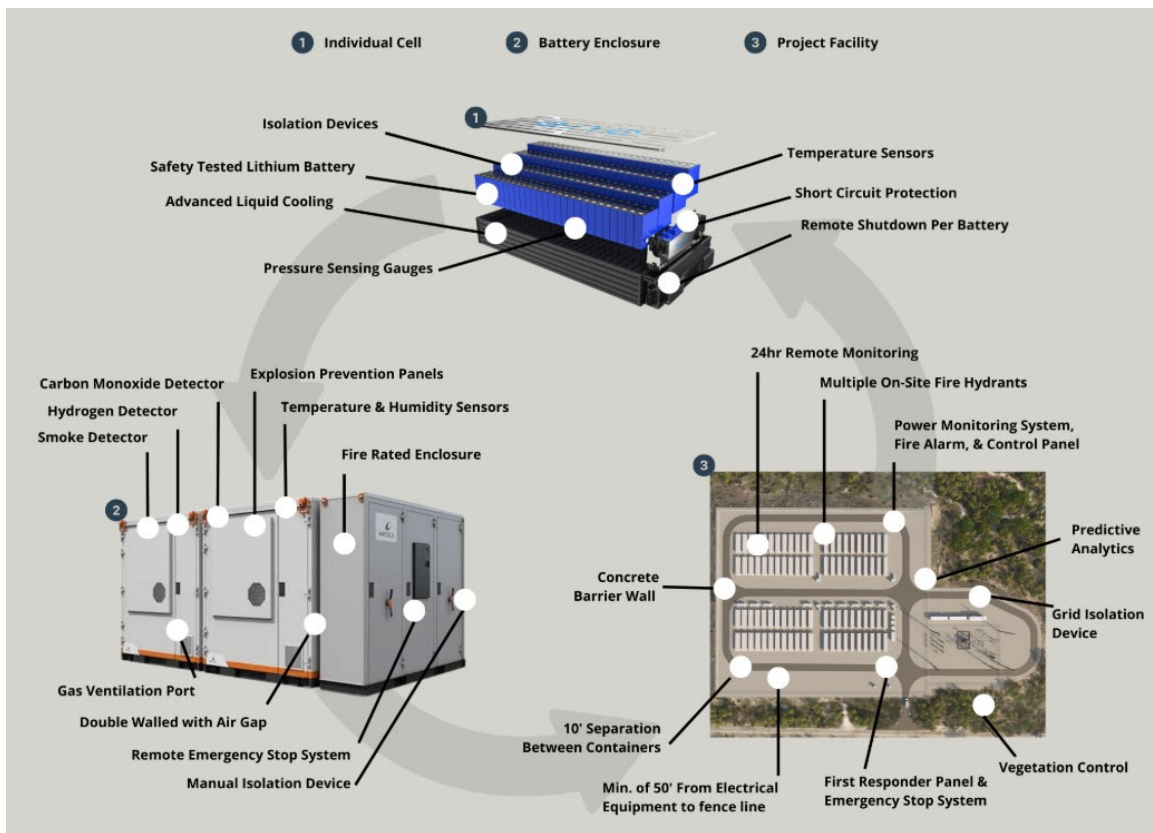
7. One example is that Rogers Draw will be installed with redundant fire suppression and support systems, as a benefit to the community. At present, the unincorporated town of Harper, TX is home to 1,250 residents and boasts an all-volunteer fire department that relies on a single 90,000-gallon-fire-water tank. As a result of the construction of the Rogers Draw project, the Harper Volunteer Fire Department and Gillespie County Emergency Services will be granted access to an additional 60,000 gallons of fire suppression water stored at the energy storage facility. Rogers Draw has completed two separate rounds of training and will continue to offer comprehensive training to First Responders in the Texas Hill Country, including the Harper Volunteer Fire Department and Gillespie County Emergency Management services, to address emergencies at the facility. These sessions provided training to over seventy first responders across sixteen departments and organizations.

8. Rogers Draw has an uncompromising commitment to safety. There will be millions of data points being measured every second at any one of Rogers Draw's energy storage projects, and if any data registers as concerning, a safety shutdown will be automatically triggered to mitigate any potential risks. Other anticipated emergency response features include, but are not limited to:

- Gas detection and ventilation systems
- Remote emergency shutdown capabilities
- Immediate notifications to local fire departments and operations response team

9. Rogers Draw has extensively reviewed applicable fire safety codes, participated in national, leading fire safety committees, and studied all fire incidents to date to create a best-in-class fire protection design standard for its projects focused on data availability and monitoring, predictive analytics, and redundant safety features at every level.

10. The Rogers Draw facility will incorporate 12 layers of fire protection focused on prevention, detection, control, and emergency response. In the rare event of an incident, the system will immediately notify emergency responders and provide them with clear, real-time information through a Fire Command Center located outside the Project facility gates. This ensures that first responders have the data they need in a safe, easily accessible and understandable format to act quickly and effectively.



11. Rogers Draw's design goes beyond current National Fire Protection Association 855 and International Fire Code standards, integrating extra layers of protection to provide peace

of mind to the community. NFPA 855 was designed to regulate energy storage systems, not prohibit them. Compliance with NFPA and IFC standards is evidence of reasonable care by Rogers Draw, not an admission of danger. Rogers Draw is committed to transparency and collaboration with local emergency personnel, providing them with ongoing training and familiarization programs to ensure they are well-prepared.

12. The facility will be equipped with redundant fire suppression systems, including two 30,000-gallon water supplies dedicated to fire emergencies. Through the completion of the design phase of the facility, Rogers Draw will provide a Firefighting Water Risk Assessment and Firewater Discharge Management Plan to address any risk mitigations required for groundwater protection.

13. The equipment planned for the Project's facility is rated for Category 5 hurricane conditions, and the entirety of the Project site is located outside of the 100- and 500-year flood plains. The Rogers Draw project is uniquely designed to operate during extreme environmental conditions such as extreme temperatures, high winds and water, dust and corrosion, and is built to remain operational and reliable during adverse weather events. Stormwater and in the event necessary, firewater runoff will be contained in an engineered detention pond designed to hold at over two times the amount of fire suppression water housed at the Rogers Draw Project, with the base elevation of the detention pond being over twenty feet in elevation above the 100-year floodplain boundary.

14. With respect to fire concerns, at the end of May 2025, Rogers Draw hosted the first of a series of first-responder trainings. It then held a second workshop in June 2025. Together, Rogers Draw has already trained more than 70 first responders and fire fighters. Partnering with Fire & Risk Alliance, these trainings were specific to battery energy storage systems. Fire and

Risk Alliance, an independent nationally recognized fire protection engineering firm, walked emergency responding agencies through sizing up the scene, propagation studies, and non-intervention versus intervention approaches. They also educated participants on the difference in battery chemistry. As explained below, Rogers Draw uses safer lithium iron phosphate as opposed to earlier systems whose chemistry was prone to overheating and combustion. And perhaps most importantly, **the technology Rogers Draw will employ has a 100% safety record.**

D. Rogers Draw’s Cooperation with Local Emergency Services.

15. In addition to the on-site safety equipment, Rogers Draw will provide comprehensive training to the Harper Volunteer Fire Department and Gillespie County Emergency Services. Rogers Draw will implement an Emergency Response Plan developed collaboratively with local Fire Departments and Emergency Services to ensure coordinated and efficient incident management.

16. Below is a breakdown of Rogers Draw’s anticipated response to a fire event.

| <u>Response Time</u> | <u>Response</u> |
|-----------------------------|---|
| < 1 SECOND | <ul style="list-style-type: none"> • Automatic Response Functions: Millions of data points are measured every second, allowing an instantaneous safety shutdown to be automatically triggered, cutting power and disconnecting from the grid. • Emergency Response Team Notification: Immediate notifications are triggered and sent to Rogers Draw’s 24/7 remote monitoring team, a local Emergency Response Coordinator, Rogers Draw’s operations team, and local fire communications network, which initiates mobilization for the fire department and other first responders. |
| < 30 SECONDS | <ul style="list-style-type: none"> • Plant Emergency Shutdown: The control system automatically performs an emergency shutdown of the entire site if needed and cuts power to all electric equipment to mitigate the risk of fire. |
| < 15 MINUTES | <ul style="list-style-type: none"> • Remote Operation Support: Rogers Draw’s remote monitoring partner is engaged and coordinating with the local incident response plan with local firefighters and emergency personnel on-site. |

| | |
|----------|--|
| | <ul style="list-style-type: none"> • Manual System Shutdown: If the system fails to automatically or remotely shut down, first responders can perform a manual safety shutdown. • Fire Hydrant Loop: The facility will have multiple fire hydrants on-site, enabling firefighters to utilize the (2) 30,000-gallon cisterns located on the Project site. |
| < 1 HOUR | <ul style="list-style-type: none"> • Local Operations Response: No matter the time of day, Rogers Draw’s Emergency Response Coordinator will be present on-site to support the incident response. |

17. Rogers Draw will implement this Emergency Response Plan collaboratively with local Fire Departments and Emergency Services to ensure coordinated and efficient incident management. The facility includes systems for detection, control, and notification to the emergency response team in the event of an incident.

E. BESS Misunderstandings.

18. Battery Energy Storage Systems are not new, but the technology has rapidly changed and improved. Rogers Draw plans to partner with a global manufacturing leader to build the batteries at Rogers Draw. This manufacturer holds a 100% safety record in their BESS and uses software that was developed here in the United States. The technology, standards, and certifications have been vastly improved compared to older projects. BESS suppliers now provide complete destructive Large Scale Fire Testing that shows that, even under extreme scenarios, fires do not spread from one container to the next. The major differences can be categorized as battery chemistry, system design, and fire suppression system.

I. Battery Chemistry (NMC vs. LFP)

19. Recent battery fires have used a Nickel Manganese Cobalt (“NMC”) battery chemistry. NMC batteries can pack more energy in smaller space but are a more volatile chemistry which increases the risk of thermal runaway and fires. A large majority of thermal runaway events have occurred at facilities that use NMC chemistry. The Rogers Draw project (and most current

systems) use Lithium Iron Phosphate (“LFP” or “LiFePO4”) chemistry. LFP batteries are not as power dense but are far safer. Most energy storage facilities now use an LFP chemistry.

II. System Design

20. Old BESS facilities used exposed battery racks packed within a series of warehouse-style buildings. Placing batteries inside a building increases risk as it creates a much larger volume of space for flammable gas to accumulate in. It also increases the chance that thermal runaway propagates across multiple units within the same building space. And if an event occurs, it is much more difficult to determine the nature of the problem and fully control the fire without sending humans into the building.

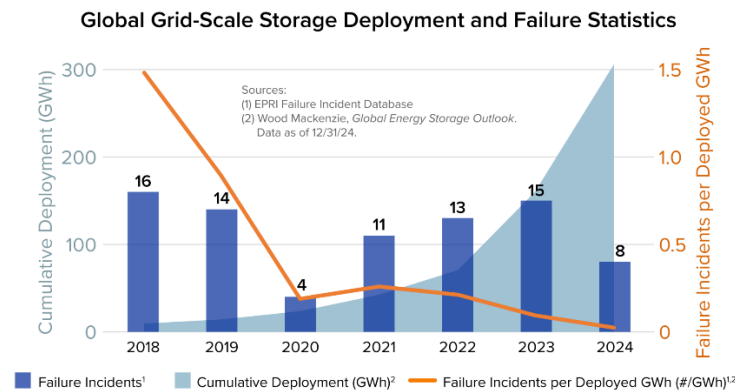
21. The Rogers Draw project (and most current designs), on the other hand, use outdoor-rated, non-occupiable containers. This means no entry into the container is required to service the battery. The planned system also uses a standard (20’x10’x8’), fire-rated enclosure to further reduce the chance of heat and flame spreading in the case of a fire.

III. Fire Suppression System

22. Older BESS facilities often used a water sprinkler system as their primary means of fire control. Research has shown that these sprinkler systems are not very effective at preventing thermal runaway. In fact, they tend to extend the duration of a runaway event, prolonging the need for fire and emergency services personnel. In contrast, Rogers Draw uses redundant gas suppression and venting systems to mitigate the risk of large-scale fires if a thermal runaway event were to occur. This will allow the fire to consume its fuel supply (the battery) and diminish to a safe state within hours. This reduces overall risk and also reduces the burden on responding Emergency Responders.

IV. Improvements in Fire Safety.

23. Due to the efforts throughout the industry, the safety record for energy storage facilities substantially improving, and Rogers Draw is committed to pushing beyond industry standards to further increase safety.¹



F. Rogers Draw Submits Plans for the Project.

24. In an email exchange between Melissa Eckert, Gillespie County Engineer, and Dustin Ingram, project developer at Rogers Draw, dated November 20, 2023 (the “2023 Email”), Mr. Ingram provided a dated Rogers Draw 145MW site layout and property boundary KMZ. In reply on December 6 2023, Ms. Eckert stated, “*There is floodplain on the site according to the FEMA BLE Viewer starting at the tree line, but most of the site is outside of the floodplain. If there are any improvements within the floodplain you would need to submit a floodplain development permit application with the floodplain administrator. We also spoke about receiving 50%, 90%, and 100% construction plans for informational purposes only.*” In the same email thread on December 8, 2023, Ms. Eckert went on to state that “***Based on the preliminary site plan it appears that there would not be any permits required by the County. I would like to see the final construction plans to ensure that remains the case. The addition of any facilities that generate***

¹ See EPRI, *Global Grid-Scale Storage Deployment and Failure Statistics*, March 17, 2025; https://storagewiki.epri.com/index.php/BESS_Failure_Incident_Database

wastewater (bathrooms, sinks, etc.) or the expansion of the site into the floodplain could potentially generate the need for a County OSSF or Floodplain permit.” See Ex. 1, 2023 Email (emphasis added). This demonstrates that as of December 8, 2023, Rogers Draw had not only submitted its site plan for the Project to the County, but that the County represented no permits would be required and that the Rogers Draw Project, as planned at the time and continuing through the current planning phase, would not affect the floodplain boundary.

G. Applicable Statutes.

25. The State of Texas consists of 254 counties, each established in accordance with Article IX, § 1 of the Texas Constitution. Each county is recognized as a legal subdivision of the State and consists of numerous “incorporated” and “unincorporated” areas. “Incorporated” areas include widely recognized cities that have their own governing structure, public services, and municipal regulations, whereas “unincorporated” areas, as the name implies, are those not otherwise part of an “incorporated” city or town. In such “unincorporated” areas, the county is deemed the local governing body responsible for public services and the administration of State laws. Here, the Project is located in the town of Harper, which is an “unincorporated” area in the County. Thus, the County is the local governing authority with respect to the Project.

26. Article V, § 18 of the Texas Constitution establishes a county commissioners court for each county in the State. The county commissioners court consists of elected county commissioners and a county judge, as the presiding officer, who are tasked with administering the county’s “business affairs” in accordance with the State Constitution and the laws of the State. Though created by the Texas Constitution, counties and county commissioners courts are subject to the State legislature’s regulation, and their powers are duties rather than privileges. As such, a county commissioners court’s powers are limited to those “expressly given by either the Texas

Constitution or the Legislature” through State statutes. *City of San Antonio*, 111 S.W.3d at 28 (citing *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948)) (emphasis added); see also *Pecos County Appraisal District v. Iraan-Sheffield Independent School District*, 672 S.W.3d 406, 407 (Tex. 2023). Furthermore, a county’s implied powers are only those “reasonably necessary to make effective” those powers expressly granted to it, and such authority will not be implied lightly. *State v. Hollins*, 620 S.W.3d 400, 406 n.28 (Tex. 2020).

27. The majority of regulatory actions taken by a county commissioners court in Texas are based in State codes. The Texas Codes set the boundaries for a county commissioners court in carrying out its local government responsibilities. Such responsibilities include overseeing public roads and bridges, managing the county’s budgetary and fiscal policy, entering into contracts on behalf of the county and protecting public health, safety and welfare of the county’s citizens. See *Guide to Texas Laws for County Officials*, TEXAS ASSOCIATION OF COUNTIES, 4 (2023). Given that the Constitution and Texas Codes set forth the bounds in which a county may act, a county commissioners court is deemed to “lack the independent ordinance authority of municipalities” when acting in its sole capacity. See Jim Allison, *Constitutional Basis of County Government*, COUNTY JUDGES & COMMISSIONERS ASSOCIATION OF TEXAS (<https://capitol.texas.gov/tlodocs/85R/handouts/C2102017030210301/1917cd8c-f32d-47b4-9640-792f3b4c8c59.PDF>).

28. Importantly, Chapter 231 of the Local Government Code, titled County Zoning Authority, creates limited situations in which specific counties in Texas are authorized to enact zoning regulations. Because the Local Government Code only provides a general zoning power for certain specific counties and limited situations, any county not explicitly identified therein lacks such authority. The County of Gillespie is not listed in Chapter 231 of the Local Government

Code, so the County of Gillespie has no general zoning authority with respect to the Project and must rely on some other source of authority or power to impose additional permitting and/or reporting requirements on the Project. Because the County lacks zoning authority, plaintiffs' claims are an attempt to achieve through litigation what the County cannot do legislatively.

H. Intervenor's Resolutions.

29. Despite its prior approval of the Project's plan, Intervenor's attitude towards the Project swiftly shifted once certain residents voiced their objections to the Project. Thereafter, the Intervenor engaged in a series of impermissible attacks against the Project, with the sole aim of prohibiting Rogers Draw from completing the Project.

30. Specifically, Intervenor recently enacted two non-regulatory resolutions aimed at frustrating the Project containing no factual findings of noncompliance. The first resolution opposes Battery Energy Storage Systems ("BESS") generally in the County (the "BESS Resolution"), and the second resolution imposes new fire-safety related reporting requirements for the Project (the "Rogers Draw Resolution;" together with the BESS Resolution, the "County Resolutions"). *See* Ex. 2 (BESS Resolution) and Ex. 3 (Rogers Draw Resolution).

31. In the BESS Resolution, the County Commissioners Court for Gillespie County (the "Commissioners Court") expresses its opposition to BESS projects generally and its support for certain BESS-related legislation proposed by Rep. Ellen Troxclair. Notably, the BESS Resolution is not an ordinance with any legal significance or effect as it fails to do the following: (i) cite to any authority from the Texas Codes or any other statute affirming that the Commissioners Court is acting within its rights to administer the County "business affairs," and (ii) make any statement that could be construed as a legally enforceable ruling or regulation on the part of the County. The Intervenor's adoption of the County Resolutions and subsequent enforcement actions

were not undertaken to remedy any identified code violation or unsafe condition, but rather to obstruct a specific, lawfully proposed project in response to political opposition. As such, the BESS Resolution is nothing more than an expression of the Commissioners Court's opinion.

32. Conversely, the Rogers Draw Resolution allegedly relies on Local Government Code § 352.016(b) for its legal effect. Section 352.016(b) provides that a county fire marshal may inspect for fire safety any structure or real property located "within 500 feet" of a structure, and, in the absence of a county fire code, the fire marshal may conduct such an inspection using any "nationally recognized code or standard adopted by the state." Furthermore, pursuant to Section 352.016(b-1), a county marshal may and shall, "if requested," review the plans of a business or commercial property for fire safety hazards.

33. In the Rogers Draw Resolution, the Commissioners Court notes that the State Fire Marshal's Office ("SFMO") adopts the 2021 National Fire Protection Association ("NFPA") 1 Fire Code and the 2020 NFPA 855 Standard for the Installation of Stationary Energy Storage Systems. Thus, in supposed accordance with Local Government Code § 352.016(b), the County adopted the same standard, and (i) defined itself as the Authority Having Jurisdiction (the "AHJ") under 2023 NFPA 855 3.2.2., (ii) adopted certain reporting requirements for plans and specifications associated with the installation, replacement, renewal, and commissioning of energy storage systems, specifically those items required to be reported to the AHJ under 2020 NFPA 855 4.1.2.1.1,8 and (iii) adopted those items required to be reported to the AHJ under 2020 NFPA 855 4.1.2.1.3.9.

I. Intervenor's Flood Zone Ordinance

34. On July 28, 2025, Gillespie County adopted the Gillespie County Flood Damage Prevention Ordinance (the "Ordinance"). *See* Ex. 4, Ordinance. According to the Ordinance, "The

Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, Gillespie County, Texas, does ordain as follows.” In other words, the Ordinance itself specifies that the requirements contained therein were not adopted by the County until July 28, 2025.

J. The County’s Stop Work Demands.

35. Pursuant to the foregoing ex-post facto Resolutions and Ordinance, County officials have issued two separate Stop Work orders demanding that Rogers Draw cease construction work on the project:

- **December 5, 2025:** Melissa Eckert issued a “Notice of Violation,” stating that “construction activities have occurred on the Rogers Draw BESS Project” in violation of Gillespie County’s Flood Damage Prevention Ordinance. Among other demands, this Notice demanded that Rogers Draw “[c]ease all construction activity within the Rogers Draw BESS project.”
- **December 10, 2025:** Steve Olfers, Gillespie County Fire Marshall, on behalf of the Gillespie County Commissioners Court, issued a Stop Work order, demanding that “[u]nder no circumstances may any work or construction continue at the [Project] until all requirements have been met, nor may any batteries for the Rogers Draw project enter Gillespie County until all requirements have been met.” The Order referenced alleged violations of NFPA 1.

These Stop Work Orders were included in a December 10, 2025 letter sent by Daniel Jones, County Judge. *See* Ex. 5, Dec. 10 Letter. Neither Stop Work Order identifies an actual emergency, fire incident, flood event, or imminent threat, and both orders are premised on anticipated future risk

alone.

K. This lawsuit.

36. On September 5, 2025, Plaintiffs Victor Hollender, Bruce Neitzke, Esther Schneider, and Sarah Rivas filed their Original Petition and Verified Application for Temporary Injunction and Permanent Injunction. Each Plaintiff allegedly resides between one-eighth miles to twelve miles away from the Project. Rogers Draw was initially one of two defendants. Plaintiffs also sued B&CWR, Inc. d/b/a Cactus Construction, a local construction company. The Individual Plaintiffs assert nuisance claims and seek temporary and permanent injunctive relief to prevent the construction of Rogers Draw. Pet. at ¶ 28 – 40. Specifically, Plaintiffs’ causes of action include: (1) intentional nuisance; (2) negligent nuisance; and (3) public nuisance. *Id.* at ¶ 28 – 33. Plaintiffs later nonsuited Cactus Construction.

37. On November 26, 2025, the County filed its Petition in Intervention and Application for Injunctive Relief. The County asserts claims for declaratory and injunctive relief.

CAUSES OF ACTION

A. Declaratory Judgment.

38. Rogers Draw incorporates by reference the allegations contained in Paragraphs 1 through 38 as if set forth fully in this count.

39. A justiciable controversy exists between Rogers Draw and Intervenor.

40. Section 245 of the Local Government Code (Chapter 245) provides that any regulatory agency “shall consider the approval, disapproval, or conditional approval of an application for a permit *solely* on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements *in effect at the time*” that (i) the permit was filed for review for any purpose, including reviews for administrative completeness, or (ii) a development

plan or plat was filed with the regulatory agency. In other words, the Code provides that once the first application for a permit required for a property-development project or a development plan or plat is filed with a regulatory agency (e.g., a county), the agency's regulations are "effectively 'frozen' in their then-current state and the agency is prohibited from subsequent regulatory changes to further restrict the property's use." *Town Park Center LLC v. City of Sealy*, 639 S.W.3d 170, 190 (2021) (quoting *Hatchett v. W. Travis Cty. Pub. Util. Agency*, 598 S.W.3d 744, 788 (2020)); see also *City of Dallas v. Millwee-Jackson Joint Venture*, No. 05-20-00611-CV, 2023 WL 1813499, at *10 (Tex. App. 2023) (noting that once the protections under Chapter 245 are triggered—upon the filing of the first permit, development plan, or plat—the regulatory requirements in place will govern through the completion of the project).

41. On November 20, 2023, Rogers Draw submitted its development plan and plat. This triggered the safe harbor provision of Section 245, effectively freezing the regulatory framework as it existed on November 20, 2023. Moreover, Melissa Eckert responded by stating: "Based on the preliminary site plan it appears that there would not be any permits required by the County."

42. Despite the foregoing, Daniel Jones, County Judge, communicated two Stop Work demands to Rogers Draw on December 10, 2025. However, the authority underpinning both Stop Work orders was effectively derived from regulations adopted *after* December 8, 2023:

- **December 5, 2025 Stop Work Order:** Alleged violation of the Gillespie County Flood Damage and Prevention Ordinance, which was adopted on July 28, 2025.
- **December 10, 2025 Stop Work Order:** Issued by the Gillespie County Commissioners Court, in its alleged capacity as the Authority Having Jurisdiction. The Gillespie County Commissioners Court declared itself the Authority Having

Jurisdiction and adopted the codes referenced in this Stop Work Order on February 24, 2025.

43. Pursuant to the Texas Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 37.001 *et seq.*, which confers jurisdiction on this Court to determine the validity of and declare rights under deeds, ordinances, statutes and other items, Rogers Draw seeks a declaratory judgment establishing the following:

- Chapter 245's safe harbor provision applies to Rogers Draw and the Project as of November 20, 2023.
- Neither the Intervenor nor any entity acting on its behalf—including the Gillespie County Commissioners Court—may attempt to enforce any code or regulation that was not (1) in existence and (2) adopted by Intervenor as of November 20, 2023.
- The December 5, 2025 Stop Work Order is unenforceable and void.
- The December 10, 2025 Stop Work Order is unenforceable and void.
- The BESS Resolution and the provisions contained therein do not apply to Rogers Draw or the Project.
- The Rogers Draw Resolution does not apply to Rogers Draw or the Project.
- Gillespie County's Flood Damage Prevention Ordinance does not apply to Rogers Draw or the Project.
- The Gillespie County Commissioners Court is not an Authority Having Jurisdiction with respect to any codes or regulations that apply to Rogers Draw or the Project.

B. Temporary and Permanent Injunctive Relief.

44. Rogers Draw incorporates by reference the allegations in Paragraphs 1 through 38 above as if set forth herein in their entirety.

45. Rogers Draw is entitled to a temporary and permanent injunction to prevent Intervenor and any entity acting on behalf of Intervenor from (1) enforcing the Stop Work Orders; and (2) using any code or regulation that was not in existence and adopted by Intervenor as of November 20, 2023 to impair Rogers Draws ability to construct the Project.

46. Rogers Draw has a substantial likelihood of prevailing on the merits of its claims because the safe harbor provision of Chapter 245 applied to Rogers Draw as of November 20, 2023.

47. Absent injunctive relief, the Intervenor and entities acting on its behalf will continue to harass and prevent Rogers Draw from safely and efficiently constructing the Project. The Intervenor's actions will cause irreparable harm by permanently destroying Rogers Draw's real property interests.

48. The damages caused by the Intervenor are impossible to calculate, and accordingly, Rogers Draw lacks a meaningful remedy at law in the form of reasonably ascertainable money damages.

49. The irreparable harm Rogers Draw will suffer if injunctive relief is denied outweighs the potential harm to Intervenor if injunctive relief is granted, and the requested injunction will not disserve the public interest.

C. Attorneys' Fees.

50. Rogers Draw seeks its costs and reasonable and necessary attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code § 37.009, the award of which would be equitable and just. Rogers Draw further seeks its costs and reasonable and necessary attorneys' fees pursuant to Chapter 245.006.

REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, Rogers Draw respectfully requests that the Court enter judgment in its favor (and against Intervenor) as follows:

1. Grant Rogers Draw's plea to the jurisdiction and dismiss Intervenor's claims against Rogers Draw for lack of subject matter jurisdiction.
2. Enter declarations that (1) Chapter 245's safe harbor provision applied to Rogers Draw and the Project as of November 20, 2023; (2) neither the Intervenor nor any entity acting on its behalf—including the Gillespie County Commissioners Court—may attempt to enforce any code or regulation that was not in existence and adopted by Intervenor as of November 20, 2023; (3) the December 5, 2025 Stop Work Order is unenforceable and void; (4) the December 10, 2025 Stop Work Order is unenforceable and void; (5) the BESS Resolution and the provisions contained therein do not apply to Rogers Draw or the Project; (6) the Rogers Draw Resolution does not apply to Rogers Draw or the Project; (7) Gillespie County's Flood Damage Prevention Ordinance does not apply to Rogers Draw or the Project; and (8) the Gillespie County is not an Authority Having Jurisdiction with respect to any codes or regulations that apply to Rogers Draw or the Project.
3. Enter an injunction prohibiting Intervenor—including its agents, contractors, and representatives—from taking any action to (1) enforce the December 5 or December 10 Stop Work Orders or (2) enforce any code or regulation that did not exist and was not adopted by the Intervenor as of November 20, 2023.
4. Award Rogers Draw its reasonable attorneys' fees, costs, and expenses to the maximum extent permitted by law (including as permitted by the Declaratory Judgment Act and Chapter 245); and
5. Grant Rogers Draw any other relief in law or in equity as this Court deem to be just and proper under the circumstances.

Dated: December 22, 2025

McGuireWoods LLP

/s/ Jeremiah J. Anderson

Jeremiah Anderson

State Bar No. 24040432

jjanderson@mcguirewoods.com

Jason Huebinger

State Bar No. 24065460

jhuebinger@mcguirewoods.com

845 Texas Ave, 24th Floor

Houston, TX 77002

Telephone: (713) 571-9191

Fascimile: (713) 571-9652

Counsel for Defendant Rogers Draw

EXHIBIT 1

From: Melissa Eckert

Sent: Friday, December 8, 2023 1:49 PM

To: Dustin Ingram

Cc: Keith Kramer ; Cameron Hufford ; Anthony Mansoor

Subject: RE: Rogers Draw Follow Up

Hi Dustin,

Based on the preliminary site plan it appears that there would not be any permits required by the County. I would like to see the final construction plans to ensure that remains the case. The addition of any facilities that generate wastewater (bathrooms, sinks, etc.) or the expansion of the site into the floodplain could potentially generate the need for a County OSSF or Floodplain permit.

I will pass your offer on to Tim Lehmberg, the Executive Director of the Gillespie County Economic Development Commission, and he will likely know what local organizations you could plug into.

Thanks,



Melissa Eckert, PE, CFM

Gillespie County Engineer

830-307-6196 (office)

830-307-2220 (cell)

From: Dustin Ingram <dingram@peregrineenergysolutions.com>

Sent: Wednesday, December 6, 2023 2:52 PM

To: Melissa Eckert <meckert@gillespiecounty.org>

Cc: Keith Kramer <kkramer@gillespiecounty.org>; Cameron Hufford <chufford@peregrineenergysolutions.com>;

Anthony Mansoor <amansoor@peregrineenergysolutions.com>

Subject: RE: Rogers Draw Follow Up

Melissa,

Thank you for the conversation and informative follow-up email.

I greatly appreciate the list of resources and POC's, we will be following up with each office in short order.

Our team will plan a site visit in early 2024 and visit Gillespie County at a regular cadence until we begin construction.

I wanted to restate our commitment to being "good neighbors" in the communities in which we work; if there are community organizations, interest groups, or county initiatives to provide education services or support to disproportionately affected communities – please let me know, Peregrine wants to be involved.

Could you please confirm via email that there are no permitting or zoning requirements for this project to the County?

Looking forward to meeting Commissioner Kramer via Teams or in person during one of our visits. Happy to invite your team or representatives to walk the site in the near future.

Utility-scale battery energy storage systems (BESS) are relatively new to the US but will play a large role in our nations energy infrastructure in the coming decades. Please feel free to reach out for general information, NFPA safety standards, and whatever else you may need.

Regards,

Dustin Ingram | Developer

P: 785.375.4609

E: dingram@peregrineenergysolutions.com



PEREGRINE ENERGY

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From: Melissa Eckert <meckert@gillespiecounty.org>
Sent: Wednesday, December 6, 2023 11:55 AM
To: Dustin Ingram <dingram@peregrineenergysolutions.com>
Cc: Keith Kramer <kkramer@gillespiecounty.org>
Subject: Rogers Draw Follow Up

Hi Dustin,

Thanks again for the meeting, here's a quick summary of items we talked about:

- Here is the contact information for Paul at the Hill Country Underground Water Conservation District, you'll need to contact them regarding permitting the existing well. Office Number: 830.997.4472 / Paul Tybor: cell phone #830.992.9314 / email address: ptybor@gmail.com
- Ranch Road 2093 is a TxDOT road so you will need to coordinate with them on the ROW permits for the driveways. We suggest to layout the driveways so they are aligned directly across from driveways on the opposite side of the road. Brad.Phipps@txdot.gov
- You indicated that there would be no plumbing/bathrooms/wastewater generation, so a County OSSF permit is not needed. I suggest verifying with the County Sanitation Department if documentation is needed for abandoning the existing OSSF system. OSSF@gillespiecounty.org
- The FEMA FIRM maps are outdated for most of Gillespie County, we advise using the FEMA BLE Maps. There is floodplain on the site according to the FEMA BLE Viewer starting at the tree line, but most of the site is outside of the floodplain. If there are any improvements within the floodplain you would need to submit a floodplain development permit application with the floodplain administrator.
floodplain@gillespiecounty.org

We also spoke about receiving the 50%, 90%, and 100% construction plans for informational purposes only. And if you could copy the Precinct Commissioner, Keith Kramer, on future emails that would be appreciated.

I can send an email to you stating that there are not any County permits once we receive the final construction plans and can verify that there would be no permits required.

Thanks again and have a good holiday season!

Thanks,



Melissa Eckert, PE, CFM
Gillespie County Engineer
830-307-6196 (office)
830-307-2220 (cell)

From: Dustin Ingram <dingram@peregrineenergysolutions.com>
Sent: Monday, November 20, 2023 3:32 PM
To: 'Melissa Eckert'; Anthony Mansoor
Cc: Cameron Hufford; Gaurav Mehta; Joseph Feole
Subject: RE: Rogers Draw - Energy Storage Facility

Melissa,

Sounds good. I'll coordinate with my team to find some time on those days.

Do you have availability the week of December 4, as an alternative? My team is traveling at the end of November and I want to make sure that everyone can attend.

I don't have a site plan complete, but I do have an early-stage layout, and KMZ for the project site, attached.

Looking forward to our discussion.

Regards,

Dustin Ingram | Developer

P: 785.375.4609

E: dingram@peregrineenergysolutions.com



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From: Melissa Eckert
Sent: Monday, November 20, 2023 1:40 PM
To: Dustin Ingram ; Anthony Mansoor
Cc: Cameron Hufford
Subject: Re: Rogers Draw - Energy Storage Facility

Hi Dustin,

I'm wide open next Tuesday 11/28, or the morning of 11/29. If you have an address or a site plan you could send over that I could take a look at beforehand that would be helpful.

Thanks,



Melissa Eckert, PE, CFM

Gillespie County Engineer

830-307-6196 (office)

830-307-2220 (cell)

From: Dustin Ingram <dingram@peregrineenergysolutions.com>
Sent: Monday, November 20, 2023 11:28 AM
To: Melissa Eckert <meckert@gillespiecounty.org>; Anthony Mansoor <amansoor@peregrineenergysolutions.com>
Cc: Cameron Hufford <chufford@peregrineenergysolutions.com>
Subject: RE: Rogers Draw - Energy Storage Facility

Melissa,

Good Morning, I'm Dustin Ingram, the Developer for the Rogers Draw Project near Harper.

I wanted to check in and find a time where we could introduce ourselves and discuss the project at your convenience.

We're available via Teams early next week, 11/28 or 11/29.

In the meantime, feel free to ask me anything about Peregrine or the Rogers Draw project via email.

Regards,

Dustin Ingram | Developer

P: 785.375.4609

E: dingram@peregrineenergysolutions.com



PEREGRINE ENERGY

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From: Melissa Eckert <meckert@gillespiecounty.org>
Sent: Wednesday, November 8, 2023 8:19 AM
To: Anthony Mansoor <amansoor@peregrineenergysolutions.com>
Cc: Dustin Ingram <dingram@peregrineenergysolutions.com>
Subject: RE: Rogers Draw - Energy Storage Facility

Hi Anthony,

I apologize for the delay, I was out of the office last week and still working through missed calls and emails. I'd be happy to sit down with you to discuss the project. Can you send me the address of the site? I'm open Monday after 1pm or Tuesday at 11am. My next available time won't be until after Thanksgiving, but I'm completely open Tuesday 11/28 or Wednesday 11/29.

Thanks,



Melissa Eckert, PE, CFM
Gillespie County Engineer
830-307-6196 (office)
830-307-2220 (cell)

From: Anthony Mansoor <amansoor@peregrineenergysolutions.com>
Sent: Monday, November 6, 2023 12:38 PM
To: Melissa Eckert <meckert@gillespiecounty.org>
Cc: Dustin Ingram <dingram@peregrineenergysolutions.com>
Subject: Rogers Draw - Energy Storage Facility

Good afternoon Melissa,

I am following up on the voicemail I left you last week. Peregrine is developing an Energy Storage Project in Harper, TX and we wanted to schedule some time with you to provide an overview of the Project and identify any general requirements that the County may have. We are also planning on meeting with your Fire Marshal, Steve Olfers. Dustin Ingram (cc'd) is our lead developer for this Project and will be your main point of contact for the time being until we get closer to the construction phase. Looking forward to setting up a call with you in the near future, thanks!

Anthony Mansoor (he/him) | Senior Director of Construction

P: 248.217.5588

E: amansoor@PeregrineEnergySolutions.com



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EXHIBIT 2



**RESOLUTION OPPOSING BATTERY ENERGY STORAGE SYSTEMS (BESS) IN
GILLESPIE COUNTY**

WHEREAS, the Commissioners Court of Gillespie County (“Commissioners Court”) is responsible for ensuring the health, safety and welfare of the citizens and visitors of Gillespie County; and

WHEREAS, the Commissioners Court is mindful of the need for dependable and sustainable energy at reasonable cost to all residents and businesses, particularly at times of high demand; and

WHEREAS, there has been an increasing number of proposed Battery Energy Storage System (“BESS”) projects in Gillespie County, utilizing technology that is new, rapidly evolving and for which there is not a well-documented history of impacts of these projects on local communities; and

WHEREAS, the operational model for BESS projects is remote management and low onsite staffing, and therefore placement of these projects in and around the County’s jurisdiction fails to achieve the critical long-range goals of increasing economic and employment opportunities for County residents; optimizing available properties to their highest and best land use; increasing land values; and developing land uses that attract families and business investment; and

WHEREAS, the BESS projects do not bring genuine long-term economic benefits to the County, including jobs and property development to its highest and best use;, and instead may burden the County with health and safety risks and costs; long-term`static land use; negative impact on existing land values; disincentivizing employers and businesses from locating into the area; and creating lower-than-optimum local sales and ad valorem tax opportunities; and

WHEREAS, the County is located in a geographic area that is subject to drought and severe and destructive wildfires and as such, County residents have been required to undertake extensive fire safety efforts at their homes and businesses and have experienced issues such as ever-increasing home insurance premiums or non-renewals of existing policies due to the potential of fires; and

WHEREAS, one significant health and safety concern reasonably related to BESS projects is the potential for the ignition of fires, explosions and “thermal runaway” events which, once initiated, are extremely difficult to extinguish and can cause explosions, toxic gas release, physical damage, and loss of life, posing significant risks to property, the environment, and human safety; and

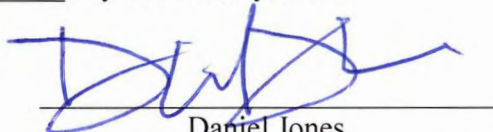
WHEREAS, the construction and operation of BESS projects in close proximity to businesses, schools, childcare centers, medical facilities, residences, other structures, major thoroughfares, and waterways poses significant risks to property, the environment, and human safety; and

WHEREAS, the Commissioners Court concurs in the need for the development of region-wide and/or state-wide BESS legislation, design guidelines, development regulations, and location placement restrictions.

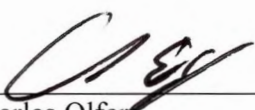
NOW, THEREFORE, BE IT RESOLVED, by the COMMISSIONERS COURT OF
GILLESPIE COUNTY, as follows:

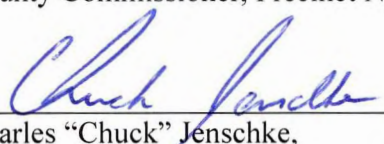
1. The above recitations are true and are incorporated herein as though fully set forth.
2. That the Commissioners Court of Gillespie County finds that Battery Energy Storage System ("BESS") projects, as currently designed and constructed, are contrary to the fundamental economic development and health and safety goals of the County.
3. That the Commissioners Court of Gillespie County hereby opposes the development and operation of all Battery Energy Storage System ("BESS") projects in Gillespie County.
4. That the Commissioners Court of Gillespie County supports the efforts of State Representative Ellen Troxclair in proposing legislation that would reasonably mitigate the risks presented by the operation of BESS projects.

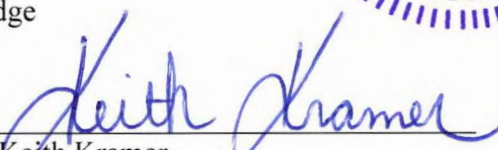
Passed and approved this 24th day of February, 2025.

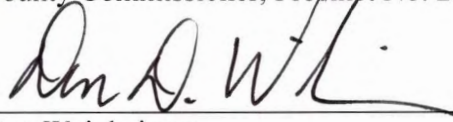

Daniel Jones,
County Judge



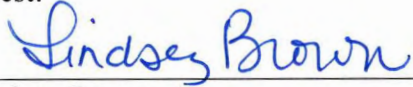

Charles Olfers,
County Commissioner, Precinct No. 1


Charles "Chuck" Jenschke,
County Commissioner, Precinct No. 3


Keith Kramer,
County Commissioner, Precinct No. 2


Don Weinheimer,
County Commissioner, Precinct No. 4

Attest:



Lindsey Brown
County Clerk

EXHIBIT 3



RESOLUTION REQUIRING HARPER BATTERY ENERGY STORAGE SYSTEM (BESS) DOCUMENTATION REQUIREMENTS

WHEREAS, Texas Local Government Code 352.016.(b) provides that in the absence of a county fire code, the county fire marshal may conduct an inspection using any nationally recognized code or standard adopted by the state; and

WHEREAS, Texas Local Government Code 352.016.(b-1) provides that in the interest of safety and fire protection, the county fire marshal shall, if required, and may, if requested, review the plans of a business, single-family residence, multi-family dwelling, or commercial property for fire or life safety hazards; and

WHEREAS, State Fire Marshal's Office (SFMO) currently adopts the 2021 National Fire Protection Association (NFPA) 1 Fire Code and the 2020 NFPA 855 Standard for the Installation of Stationary Energy Storage Systems; and

WHEREAS, 2020 NFPA 855 3.2.2 defines Authority Having Jurisdiction (AHJ) as an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure; and

WHEREAS, 2020 NFPA 855 4.1.2.1.1 provides that the plans and specifications associated with ESS (Energy Storage Systems) and its intended installation, replacement or renewal, commissioning, and use shall be submitted to the AHJ for approval and includes the Items (1) through (8) below; and

WHEREAS, 2020 NFPA 855 4.1.2.1.3 provides that the following test data, evaluation information, and calculations [set forth in Items (9) through (12) below] shall be provided in addition to the plans and specifications in 4.1.2.1.1 where required elsewhere in the standard; and

WHEREAS, the Rogers Draw Energy Storage Project (Harper BESS) is situated approximately 550 yards from the K-12 Harper ISD where the prevailing wind for 9 months out of the year would carry any highly toxic smoke produced by the Harper BESS directly towards the school and surrounding community; and

WHEREAS, the Harper BESS is situated approximately 610 yards from the Harper Head Start Preschool, where the wind could carry any highly toxic smoke produced by the Harper BESS towards the Preschool and surrounding community; and

WHEREAS, the Pedernales River riverbed is located inside the Harper BESS property and the

details of the site plan Peregrine Energy claims were developed to purposefully ensure that the headwaters of the Pedernales River remain unaffected by the project are unknown; and

WHEREAS, the Harper BESS will be the first Peregrine Energy Solutions first installation, and the battery supplier Wartsila's Quantum 2 modular battery system was reported on April 6, 2024 to have not been rolled out anywhere to date; and

WHEREAS, the Electric Power Research Institute (EPRI) 2024 White Paper entitled "Insights from EPRI's Battery Energy Storage Systems (BESS) Failure Incident Database" in May 2024 reported 81 incidents and information about root causes for 26 incidents; the breakdown of BESS failures by root cause was 36% Integration, Assembly & Construction, 29% Operation, 21% Design, and 14% Manufacturing; and nine more incidents have been added to date including the recent Moss Landing 300MW BESS fire that started on January 16, 2025; and

THEREFORE, BE IT RESOLVED THAT, the Commissioners Court of Gillespie County adopts this Resolution to proactively mitigate the safety and environmental risks associated with the Rogers Draw Energy Storage Project located in Harper, Texas, during the full life cycle of the Project by enforcing certain requirements related to the Authority Having Jurisdiction (AHJ) in the 2020 NFPA 855 Standard currently adopted by the State Fire Marshal's Office (SFMO); and

FURTHERMORE, BE IT RESOLVED THAT, the AHJ be defined as the Gillespie County Commissioners Court, and any designees, including the Gillespie County Fire Marshal; and

FURTHERMORE, BE IT RESOLVED THAT, the following plans and specifications associated with the ESS and their intended installation of the Rogers Draw Energy Storage Project, as outlined in 2020 NFPA 4.1.2.1.1, shall be submitted by Peregrine Energy Solutions, LLC, its agents, representatives, successors, subsidiaries, and assigns (collectively referred to herein as "Peregrine Energy Solutions, LLC"), to the AHJ for approval:

- (1) Location and layout diagram of the room or area in which the ESS (Energy Storage Systems) are to be installed.
- (2) Details on hourly fire-resistant-rated assemblies provided or relied upon in relation to the ESS
- (3) The quantities and types of ESS units
- (4) Manufacturer's specifications, ratings, and listings of ESS
- (5) Description of energy storage management systems and their operation
- (6) Location and content of required signage
- (7) Details on fire suppression, smoke or fire detection, gas detection, thermal management, ventilation, exhaust, and deflagration venting systems, if provided
- (8) Support arrangement associated with the installation

FURTHERMORE, BE IT RESOLVED THAT, the following use data, evaluation information, and calculations as outlined in 2020 NFPA 4.1.2.1.3, shall be provided by Peregrine Energy Solutions, LLC, to the AHJ:

- (9) Calculations or modeling data to determine compliance with NFPA 68 (Standard on Explosion Protection by Deflagration Venting) and NFPA 69 (Standard on Explosion Prevention Systems)
- (10) Large-scale fire test data
- (11) Hazard Mitigation Analysis (HMA)
- (12) Other test data, evaluation information, or calculations required elsewhere in this Standard.

Passed and approved this 24 day of February, 2025.



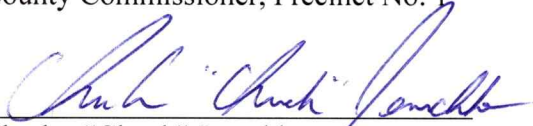
Daniel Jones,
County Judge



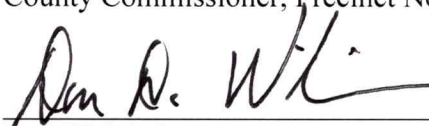
Charles Offers,
County Commissioner, Precinct No. 1



Keith Kramer,
County Commissioner, Precinct No. 2



Charles "Chuck" Jenschke,
County Commissioner, Precinct No. 3



Don Weinheimer,
County Commissioner, Precinct No. 4



Attest: 

Lindsey Brown
County Clerk



EXHIBIT 4



GILLESPIE COUNTY FLOOD DAMAGE PREVENTION ORDINANCE

EFFECTIVE: JULY 28, 2025

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ARTICLE 1 ADMINISTRATIVE PROVISIONS

Section 1.1 STATUTORY AUTHORIZATION

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, Gillespie County, Texas, does ordain as follows:

Section 1.2 FINDINGS OF FACT

1. The flood hazard areas of Gillespie County, Texas are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

Section 1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
7. Ensure that potential buyers are notified that property is in a flood area.

Section 1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other development, which may increase flood damage;

5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Section 1.5 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. Accessory Structure - a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure.
2. Agricultural Structure - a walled and roofed structure used exclusively for agricultural purposes or uses in connection with production, harvesting, storage, raising or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.
3. Alluvial Fan Flooding - flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.
4. Apex - a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.
5. Appurtenant Structure - a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure
6. Area Of Future Conditions Flood Hazard - the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.
7. Area Of Shallow Flooding - a designated AO, AH, AR/AO, or AR/AH zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
8. Area Of Special Flood Hazard - is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, or AR/A on the community's Flood Insurance Rate Map (FIRM), or a designated area on a map and/or engineering study deemed as best available information by the Floodplain Administrator.
9. Base Flood - the flood having a 1 percent chance of being equaled or exceeded in any given year.
10. Base Flood Elevation (BFE) - the water surface elevation resulting from the Base Flood. The BFE is typically the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, or AR, or the elevation deemed as best available information by the Floodplain Administrator.
11. Basement - any area of the building having its floor subgrade (below ground level) on all sides.
12. Breakaway Wall - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

13. Chief Executive Officer of the community (CEO) - the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.
14. Closed Basin Lake - a lake with no outlet or a lake with inadequate regulated or elevated outlets.
15. Community - any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
16. Criteria - the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in this ordinance.
17. Critical Feature - an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.
18. Development - any temporary or permanent man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
19. Elevated Building - for insurance purposes, means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.
20. Enclosure - a walled in area below the lowest floor of an elevated building. Enclosures below the Base Flood Elevation (BFE) shall only be used for building access, vehicle parking, and storage.
21. Engineer - a person licensed and authorized to practice engineering in the State of Texas
22. Exceptional Hardship - for the purposes of variance from this ordinance, the exceptional difficulty that would result from a failure to grant the requested variance. The hardship must be exceptional, unusual and specific to the property involved, not to the personal circumstances of the permit applicant.
23. Existing Construction - for the purposes of determining rates, means structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, whichever is later. "Existing construction" may also be referred to as "existing structures."
24. Existing Manufactured Home Park Or Subdivision - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
25. Expansion To An Existing Manufactured Home Park Or Subdivision - the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
26. Flood Or Flooding - a general and temporary condition of partial or complete inundation of normally dry land areas from (a) the overflow of inland or tidal waters or (b) the unusual and rapid accumulation or runoff of surface waters from any source.
27. Flood Damage Resistant Material - any building product [material, component or system] capable of withstanding direct and prolonged contact with flood waters without sustaining significant damage. "Prolonged contact" means at least 72 hours and "significant damage" means any

damage requiring more than cosmetic repair (including cleaning, sanitizing and resurfacing – sanding, repair of joints or repainting – of the material).

28. Flood Elevation Study –an examination, evaluation, and determination of (a) flood hazards and, if appropriate, corresponding water surface elevations, or (b) mudslide (i.e., mudflow) and/or flood-related erosion hazards.
29. Flood Hazard Boundary Map (FHBM) - an official map of a community, issued by the Floodplain Administrator, where the floodplain boundaries and mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.
30. Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.
31. Flood Insurance Study (FIS) – see Flood Elevation Study
32. Flood Opening - openings in foundation walls and walls of enclosures that relieve hydrostatic loads to meet basic performance requirements to prevent flotation, collapse and lateral movement due to flood forces. Non-engineered openings do not have moving parts, and openings with moving parts may be used if designed and certified by a registered design professional as meeting certain performance characteristics.
33. Flood Protection System - physical structural works which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.
34. Flood Proofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
35. Floodplain Or Flood-Prone Area - any land area susceptible to being inundated by water from any source (see definition of flooding).
36. Floodplain Management - the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.
37. Floodplain Management Regulations – federal, state, or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
38. Floodway – see Regulatory Floodway
39. Freeboard - a factor of safety, usually expressed in feet above a flood level, for purposes of floodplain management.
40. Functionally Dependent Use – a use which cannot perform its intended purpose unless it's located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
41. Highest Adjacent Grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
42. Historic Structure - any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by (i) an approved state program as determined by the Secretary of the Interior, or (ii) directly by the Secretary of the Interior in states without approved programs.
43. Impervious Cover - a human-made surface that doesn't allow water to seep into the ground and instead causes water to run off. This includes, but is not limited to, surfaces like rooftops, patios (wood, concrete, etc.), driveways/roads (paved or unpaved), sidewalks (paved or unpaved), parking lots (paved or unpaved), and highly compacted soils.
44. Levee - a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
45. Levee System - a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.
46. Lowest Floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.
47. Manufactured Home – for floodplain management purposes, means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.
48. Manufactured Home Park Or Subdivision - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots or spaces for rent or sale.
49. Mean Sea Level - for purposes of the National Flood Insurance Program, means the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
50. New Construction - for floodplain management purposes, means development for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such developments. For the purpose of determining insurance rates, means structures for which the "start of construction" commenced on or after the effective date of the initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.
51. New Manufactured Home Park Or Subdivision - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to

be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

52. Non-residential Structure – a business, commercial, or non-habitation building that does not qualify as a residential building. This category includes, but is not limited to, businesses, churches, schools, garages, pool houses, clubhouses, recreational buildings, mercantile buildings, agricultural and industrial buildings, warehouses, nursing homes, short-term rentals (dwelling with a rental period of less than 6 months), and hotels and motels.
53. One-Percent Annual Chance Flood – see Base Flood.
54. Permanent Construction – includes the pouring of slab or footings or RV pads, the installation of piles, the construction of columns, utility installation, or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
55. Person - includes any individual or group of individuals, corporation, partnership, association or any other entity, including State and local governments and agencies.
56. Pre-Developed Condition – the state and condition of the land prior to the initiation of land disturbing construction activity, including grading.
57. Project – see Development
58. Recreational Vehicle (RV) - a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
59. Regulatory Floodway - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
60. Remedy a Violation - to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.
61. Residential Structure – a non-commercial building used as a dwelling for one to four families
62. Riverine – relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
63. Special Flood Hazard Area (SFHA) – see Area of Special Flood Hazard
64. Start Of Construction – includes substantial improvement and means the date the floodplain development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of “permanent construction” of a structure on a site, or the placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other

structural part of a building, whether or not that alteration affects the external dimensions of the building.

65. Structure – for floodplain management purposes, means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
66. Subdivision Regulations – the current version of the Gillespie County Subdivision and Manufactured Home Rental Community Regulations
67. Substantial Damage - damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
68. Substantial Improvement - any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either (a) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by a local code enforcement official and which are the minimum necessary to assure safe living conditions, or (b) any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."
69. Variance – a grant of relief by a community from the terms of a floodplain management regulation.
70. Violation - the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
71. Walled and Roofed – a building that has two or more exterior rigid walls and a fully secured roof that is affixed to a permanent site
72. Water Surface Elevation - the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
73. Zone A – an area of special flood hazard representing an approximately studied flood zone where Base Flood Elevations have not been provided.
74. Zone AE – an area of special flood hazard representing a studied flood zone where Base Flood Elevations have been provided.
75. Zone X – an area of minimal or moderate flood hazard which is higher than the Base Flood Elevation.

Section 1.6 SEVERABILITY

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

ARTICLE 2 GENERAL PROVISIONS

Section 2.1 LANDS TO WHICH THIS ORDINANCE APPLIES

The ordinance shall apply to all areas of special flood hazard (including but not limited to Zone A and Zone AE), and all areas of moderate and minimal flood hazard (including but not limited to Zone X) within the jurisdiction of Gillespie County, Texas.

Section 2.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard, moderate flood hazard, and minimal flood hazard identified by the following are hereby adopted by reference and declared to be a part of this ordinance:

- A. The areas of special flood hazard, moderate flood hazard, and minimal flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Gillespie County, Texas and Incorporated Areas," dated October 19, 2001, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) dated October 19, 2001 and any revisions thereto.
- B. The areas identified by the Federal Emergency Management Agency's Base Level Engineering maps as a 1% Flood Extent are adopted as an area of special flood hazard as Zone A flood boundaries.
- C. The areas identified by the Federal Emergency Management Agency's Base Level Engineering maps as a 10% Flood Extent are adopted as an area of special flood hazard as floodway boundaries.
- D. The areas identified by the Federal Emergency Management Agency's Base Level Engineering maps outside of the 1% Flood Extent are adopted as an area of moderate and/or minimal flood hazard.
- E. In the event of a discrepancy between any of the sources listed above regarding the identification of an area, the effective data shall be determined by the Floodplain Administrator. Generally, the prioritization of effective data will be as follows:
 - 1. BLE 10% Flood Extent combined with data from #2-#5 below, except where the effective FEMA FIRM has a defined Zone AE Floodway.
 - 2. Most recent LOMC approved by FEMA.
 - 3. Effective FEMA FIRM, Zone AE
 - 4. BLE Flood Extents
 - 5. Effective FEMA FIRM, Zone A

Section 2.3 ESTABLISHMENT OF DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance. Small projects that do not present an obstruction to flood flows or alter drainage, such as sign posts or telephone poles, may be exempted from permitting by the Floodplain Administrator at his/her discretion.

All development permitted under a Floodplain Development Permit is subject to the Road Damage and Repair provisions described in the Subdivision Regulations.

Section 2.4 COMPLIANCE

2.4.1 Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

2.4.2 Penalties For Non-Compliance

Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 for each violation, and in addition shall pay all costs and expenses involved in the case. Each violation of this ordinance and each day of a continuing violation shall constitute a separate offense. Nothing herein contained shall prevent the Commissioners Court of Gillespie County, Texas from taking such other lawful action as is necessary to prevent or remedy any violation.

2.4.3 Maintenance

Maintenance of the development, drainage facilities, and other improvements constructed under the floodplain development permit shall be the responsibility of the applicant, or the successive property owners. If any facilities or improvements fail to function as designed, whether due to lack of maintenance or any other reason, the applicant, or the successive property owners, shall be responsible for the design and construction costs to restore the system to its original specifications or an improved condition.

Failure to maintain the development, drainage facilities, and other improvements constructed under the floodplain development permit is subject to the penalties for non-compliance stated in this Section.

Section 2.5 ABROGATION AND GREATER RESTRICTIONS

This ordinance shall supersede, repeal, and replace the Flood Damage Prevention Ordinance passed and approved by the County September 24, 2001.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, requirement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 2.6 INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

The separate headings contained in this ordinance are for reference and convenience only and shall not limit or otherwise affect the meaning of the requirements.

Section 2.7 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Section 2.8 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The County Engineer, or their designee, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

Section 2.9 DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
2. Review permit applications to determine whether to ensure that the proposed building site project, including the placement of manufactured homes and recreational vehicles, will be reasonably safe from flooding.
3. Review, approve, or deny all applications for floodplain development permits required by adoption of this ordinance.
4. Review permits for proposed development to ensure that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards the Floodplain Administrator shall make the necessary interpretation.
6. In riverine situations, notify adjacent communities, the Texas Commission on Environmental Quality (TCEQ), and the Texas Water Development Board (TWDB), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
8. When BFE data is not identified on a FEMA FIRM or FEMA FIS, the Floodplain Administrator shall obtain, review and reasonably utilize any BFE data and floodway data available from a Federal, State or other source, in order to administer the provisions of ARTICLE 3.

Section 2.10 PERMIT PROCEDURES

2.10.1 Permit Application Submittal

Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to:

- A. The complete and executed application form;
- B. Construction plans in duplicate drawn to scale showing the location, dimensions, and elevation of the proposed development, existing and proposed grading, paving, and stormwater facilities, landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard;
- C. Flood study prepared, signed, and sealed by a professional engineer licensed in Texas detailing the existing and proposed conditions, including but not limited to floodplain boundaries, BFE data, and topographic information;
- D. Digital modeling files used by the engineer to create the information provided in the flood study;
- E. Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, or elevation of lowest adjacent grade for recreational vehicle spaces;
- F. Elevation Certificate developed by FEMA, current version, prepared by a registered engineer or surveyor and submitted with the construction plans, after form boards are set and prior to construction of the foundation, and with the finished construction.
- G. Elevation in relation to mean sea level to which any non-residential structure shall be floodproofed;
- H. For floodproofed non-residential structures, a Dry Floodproofing Certificate developed by FEMA, current version, prepared by a registered engineer or architect and submitted with the construction plans (See NFIP Technical Bulletin 3, Requirements for the Design and Certification of Dry Floodproofed Non-Residential and Mixed-Use Buildings);
- I. When engineered flood openings are used, certification that engineered flood openings are designed to meet the minimum requirements of Section 3.4.5 to automatically equalize hydrostatic flood forces
- J. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
- K. Certifications prepared, signed, and sealed by a professional engineer licensed in Texas (or other qualified individual as approved by the Floodplain Administrator), that the criteria listed in Section 3.2 is satisfied.
- L. Certification prepared, signed, and sealed by a professional engineer licensed in Texas that all federal, state, and local permits required for the development have been approved, or are not required,
- M. Copies of all required federal, state, and local permits marked as approved by the appropriate jurisdiction

- N. Payment of the permit application fee as described in Section 2.11.
- O. Upon completion of construction, as-built plans and a signed and sealed plan conformance letter verifying that the stormwater management facilities and other improvements, including grading, have been constructed in general conformance with the approved drainage study and construction documents and all areas disturbed by construction are revegetated or adequately stabilized.

2.10.2 Permit Application Review

- A. Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
 - 1. The danger to life and property due to flooding or erosion damage;
 - 2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - 3. The danger that materials may be swept onto other lands to the injury of others;
 - 4. The compatibility of the proposed use with existing and anticipated development;
 - 5. The necessity to the facility of a waterfront location, where applicable;
 - 6. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - 7. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - 8. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site;
 - 9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
- B. Third Party Review
 - 1. The Floodplain Administrator may have a third-party engineer review the information provided as part of the floodplain development permit application at the developer's cost. All costs associated with the third-party review shall be paid by the developer prior to the approval of the floodplain development permit application

2.10.3 Permit Expiration

The approval of a Floodplain Development Permit expires 1 year from the date of approval if no progress has been made towards completion of the development.

Section 2.11 PERMIT APPLICATION FEE

Permit fees may be adjusted by the Commissioners Court at any time, the adopted fee shall be updated by amendment to this Ordinance. It is the responsibility of the applicant to ensure that the applicant is referring to the most current version of this Ordinance.

Permit fees must be paid at the time of application by personal check, cashier's check, or other method accepted by the County and made payable to Gillespie County. Payment may be hand delivered or mailed to the Gillespie County Courthouse to the attention of the Engineering Department at 101 West Main

Street, Fredericksburg, Texas 78624. Third party engineering review fees, if applicable, must be paid prior to permit approval.

Table 2-1: Floodplain Development Permit Application Fees

If construction has started prior to approval of a floodplain development permit application, the applicant shall pay the calculated permit fee x 2.

| Review Type | Fee |
|------------------------|-------------|
| Administrative Fee | \$100 |
| Third Party Review Fee | Actual cost |

Section 2.12 VARIANCE PROCEDURES

2.12.1 Application

Variances must be requested from the Commissioner's Court prior to or at the same time as a permit application using the form provided by the Floodplain Administrator. The applicant may provide additional exhibits necessary to explain or justify the variance. The Commissioner's Court shall hear and render judgment on requests for variances from the requirements of this ordinance.

The Commissioner's Court shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person or persons aggrieved by the decision of the Commissioner's Court may appeal such decision in the courts of competent jurisdiction.

The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

2.12.2 Criteria for Approval

- A. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- B. Variances shall only be issued upon:
 - 1. showing a good and sufficient cause;
 - 2. a determination that failure to grant the variance would result in exceptional hardship to the applicant, financial hardship shall not be a basis for the Commissioner's Court granting relief from this ordinance; and
 - 3. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- C. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places if the proposed reconstruction, rehabilitation or restoration will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

- D. Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 2.10.2 have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- E. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (a) the criteria outlined in Section 2.12 are met, and (b) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- F. Variances may be issued for agricultural structures. A variance is authorized to be issued for the construction or substantial improvement of at-grade agricultural structures provided that the structure meets the following criteria:
 - 1. has low damage potential (amount of physical damage, contents damage and loss of function); and
 - 2. does not increase risks and pose a danger to public health, safety and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals and production and storage of highly volatile, toxic or water-reactive materials; and
 - 3. complies with the following wet floodproofing construction requirements:
 - a. is anchored to resist flotation, collapse, and lateral movement; and
 - b. has flood damage-resistant materials below the base flood elevation in compliance with the requirements of Article 3 of this Ordinance; and
 - c. has mechanical, electrical, and utility equipment in compliance with the requirements of Article 3 of this Ordinance; and
 - d. has flood openings in compliance with the requirements of Article 3 of this Ordinance.
- G. Upon consideration of the factors noted above and the intent of this ordinance, the Commissioner's Court may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance.

2.12.3 Prohibitions

- A. Variances shall not be issued within any designated floodplain if any increase in flood levels during the base flood discharge would result unless specifically permitted by Section 3.7

2.12.4 Notice

Any application to which a variance is granted is hereby notified that the cost of flood insurance will increase correspondingly to the increased risk resulting from a reduced lowest floor elevation.

2.12.5 Expiration

- A. If a variance is granted prior to a permit application, the variance shall expire 6 months after its approval if the permit application has not been approved by the Floodplain Administrator.

- B. If a variance is granted simultaneously with a permit application, the variance shall expire at the same time as the permit as described in Section 2.10.3.
- C. If a variance expires, a new variance application must be submitted in accordance with the requirements of this Section.

ARTICLE 3 PROVISIONS FOR FLOOD HAZARD REDUCTION

Section 3.1 ESTABLISHING THE BASE FLOOD ELEVATION

3.1.1 Establishing the BFE in Zone A

- A. Subdivisions Or Developments Equal to Or Less Than 30 Lots Or 5 Acres where the tract is wholly or partially within Zone A:
 - 1. The BFE may be determined by the Floodplain Administrator using best available data, the Floodplain Administrator may require the applicant to hire an engineer to develop a BFE using one of the methods in the FEMA publication “*Managing Floodplain development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations.*”, or the BFE may be determined by a Hydrologic and Hydraulic Study performed by the developer’s engineer.
 - 2. The required finished floor elevation must be reported for each lot within the SFHA on the final plat of the subdivision or survey of the development
- B. Subdivisions Or Developments Greater Than 30 Lots Or 5 Acres where the tract is wholly or partially within Zone A:
 - 1. The BFE must be determined by a detailed Hydrologic and Hydraulic Study performed by the developer’s engineer. Copies of all reports and modeling must be submitted to the Floodplain Administrator with the floodplain development permit application. All studies will be reviewed by a third-party engineer selected by the Floodplain Administrator at the developer’s cost.
 - 2. The Hydrologic and Hydraulic Study shall be submitted from the developer to FEMA as a LOMR for review and approval prior to floodplain development permit approval. If the developer receives an approved CLOMR from FEMA, a floodplain development permit may be approved conditioned on the developer obtaining an approved LOMR from FEMA prior to construction of any permanent or vertical construction.
 - 3. The required finished floor elevation must be reported for each lot within the SFHA on the final plat of the subdivision or survey of the development.
- C. Subdivisions or Developments with the entirety of the SFHA in an undeveloped open space lot may not be required to establish BFE’s if a drainage easement is established over the SFHA prohibiting all encroachments, including fill, manufactured homes, recreational vehicles, new construction, substantial improvements, inoperable vehicles, trash, debris, and other development within the easement.

3.1.2 Establishing the BFE in Zone AE

- A. The BFE shall be determined by the developer’s engineer based on the effective FEMA FIRM maps and FIS studies.
- B. Hydrologic and Hydraulic studies, when performed, may be used as the effective BFE and SFHA boundaries unless a LOMR is required as described in ARTICLE 4.

Section 3.2 GENERAL STANDARDS

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- A. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- B. All new construction or substantial improvements, including subdivision proposals and manufactured home parks or subdivisions, shall be constructed by methods and practices that minimize flood damage;
- C. All new construction or substantial improvements shall be constructed with materials resistant to flood damage, only Class 4 and Class 5 materials are acceptable for areas below the base flood elevation in buildings in special flood hazard areas (see NFIP Technical Bulletin 2, Flood Damage-Resistant Materials Requirements);
- D. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- E. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters;
- G. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;
- H. All development shall have adequate drainage provided to reduce exposure to flood hazards;
- I. All disturbed areas within the floodplain shall be revegetated or adequately stabilized to prevent erosion and scouring, seeding alone does not constitute revegetation; and,
- J. All development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
- K. The Floodplain Administrator may require a subdivision or development wholly or partially in the SFHA to submit a site-specific Emergency Preparedness Plan approved by the County Emergency Management Coordinator. At a minimum, the Emergency Preparedness Plan must provide a detailed description of all the items listed below and be signed by the developer.
 - 1. Identification of special flood hazard areas with a 0.2% chance or more of flooding; including a proposed signage plan to identify these areas on site.
 - 2. What type of notification or warning system will be in place; including how and when notifications are delivered to occupants, the staff responsible for delivering notifications and their contact information (must be available 24 hours a day), the ratio of staff delivering notifications to the number of occupants, and how the notification system is operated and maintained.

3. What specific metrics are monitored or measured to determine if a notification or warning will be issued; including what measure the metric reaches to initiate delivery of notifications or warnings, the staff responsible for the monitoring of those metrics and their contact information (must be available 24 hours a day).
4. A template document or message displaying the information that will be provided to occupants on the notifications and warnings.
5. Frequency of staff flood emergency drills; including the training process for staff responsible for the monitoring and notification procedures detailed in #2 and #3.
6. Identify staff who will be certified to administer first aid and CPR.
7. How the contact information for on-site occupants will be stored and distributed when it is requested by Emergency Management personnel.
8. An evacuation plan; including information on unflooded exit routes, off-site locations that evacuees will be directed, on-site shelter locations on higher grounds, and transportation plans for occupants without vehicles.

Section 3.3 SPECIFIC STANDARDS – ZONE X

3.3.1 Residential Structures

Residential structures constructed in Zone X shall submit a site plan showing the structure location in relation to the floodplain boundaries on the property. Structures within 100 feet of a SFHA must submit an Elevation Certificate confirming the lowest adjacent grade is above the BFE.

3.3.2 Nonresidential Structures

Nonresidential construction in Zone X shall submit a site plan showing the structure location in relation to the floodplain boundaries on the property. Structures within 100 feet of a SFHA must submit an Elevation Certificate confirming the lowest adjacent grade is above the BFE.

3.3.3 Manufactured Homes

Manufactured Homes placed in Zone X shall submit a site plan showing the manufactured home location in relation to the floodplain boundaries on the property. Manufactured Homes within 100 feet of a SFHA must submit an Elevation Certificate confirming the lowest adjacent grade is above the BFE.

3.3.4 Recreational Vehicles

Recreational Vehicles placed in Zone X shall submit a site plan showing the recreational vehicle location in relation to the floodplain boundaries on the property. Recreational Vehicle spaces within 100 feet of a SFHA must report the lowest adjacent grade confirming the lowest adjacent grade is above the BFE.

3.3.5 Other Development

“Other Development” includes but is not limited to new construction, grading, paving, drainage, fill, and excavation. Refer to Section 1.5 for the definition of “development.”

- A. Development of a tract wholly within Zone X with total impervious cover of 40% or greater shall reduce the project’s post-development peak flows, water surface elevations, and flow velocity to pre-development rates for the 5, 10, 50, and 100-year storm events at all points of

discharge. An engineer shall provide construction plans for stormwater management facilities and a drainage study certifying this condition is met. The Floodplain Administrator may require an upstream and/or downstream assessment in an area with known flooding problems or if development is proposed within 100 feet of a property line or shared access easement. The upstream and/or downstream assessment shall extend at least 1,320 feet beyond the property line, measured along the creek centerline.

- B. Notice is hereby given that no person may divert or impound the natural flow of surface waters in a manner that damages the property of another by the overflow of the water diverted or impounded per Section 11.086 of the Texas Water Code. Claims of damages under the Texas Water Code may be addressed through civil litigation between property owners.

Section 3.4 SPECIFIC STANDARDS – ZONE A, ZONE A1-30, ZONE AE

3.4.1 Major and Minor Projects Defined

- A. A Minor Project may include development on a property resulting in less than 10% impervious cover, construction of walls or fences which are 50% open or more, regrading or disturbance of less than 0.25 acres with insignificant cut/fill as determined by the Floodplain Administrator, or other similar development as determined by the Floodplain Administrator.
- B. A Major Project is any development that is not considered a minor project by the Floodplain Administrator. All alterations of a watercourse or natural drainage, and all subdivisions or developments greater than 30 lots or 5 acres are considered a major project.

3.4.2 Requirements for Major and Minor Projects

- A. Projects on a property wholly or partially in Zone A
 - 1. Minor Projects shall meet the requirements of Section 3.2 and Section 3.4.
 - 2. Major Projects shall meet the requirements of Section 3.2 and Section 3.4, and must either:
 - a. utilize compensatory storage to offset any loss of flood storage capacity, or
 - b. demonstrate through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development, when combined with all other existing and anticipated development, would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- B. Projects on a property wholly or partially in in Zone AE
 - 1. Minor Projects shall meet the requirements of Section 3.2 and Section 3.4, and must either:
 - a. utilize compensatory storage to offset any loss of flood storage capacity, or
 - b. demonstrate through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development, when combined with all other existing and anticipated development, would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. Major Projects shall meet the requirements of Section 3.2 and Section 3.4 and shall demonstrate through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development, when combined with all other existing and anticipated development, would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

3.4.3 Residential Structures

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one foot above the BFE.

3.4.4 Nonresidential Construction

New construction and substantial improvement of any non-residential structure shall either have the lowest floor (including basement) elevated to at least one foot above the BFE, or together with attendant utility and sanitary facilities, be designed so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy to at least one foot above the BFE. Floodproofing shall not be permitted where the BFE is more than 2 feet above grade.

3.4.5 Enclosures

- A. See Section 1.5 for the definition of an Enclosure.
- B. New construction and substantial improvement of any enclosure shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 1. A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
 2. The bottom of all openings shall be no higher than 1-foot above grade.
 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

3.4.6 Manufactured Homes

- A. Manufactured homes are not permitted where the BFE is more than 1-foot above grade.
- B. Where permitted, manufactured homes placed or substantially improved on sites outside of a manufactured home park or subdivision shall be elevated so that the lowest floor of the manufactured home is at least one foot above the BFE and anchored to resist flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, the use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- C. Where permitted, manufactured homes placed or substantially improved on sites (a) in a new manufactured home park or subdivision, (b) in an expansion to an existing manufactured home park or subdivision, or (c) in an existing manufactured home park or subdivision shall be elevated on a permanent foundation so that the lowest floor of the manufactured home is at

least one foot above the BFE and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

3.4.7 Recreational Vehicles

- A. Recreational Vehicles are not permitted where the BFE is more than 1-foot above grade.
- B. Where permitted, recreational vehicles shall (a) be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use, or (b) meet the permit requirements of Section 2.10 and the elevation and anchoring requirements for "manufactured homes" in Section 3.4.6. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

3.4.8 Other Development

"Other Development" includes but is not limited to new construction, grading, paving, drainage, fill, and excavation. Refer to Section 1.5 for the definition of "development."

- A. Development of a tract wholly or partially in Zone A or AE with total impervious cover of 40% or greater shall reduce the project's post-development peak flows, water surface elevations, and flow velocity to pre-development rates for the 5, 10, 50, and 100-year storm events at all points of discharge. An engineer shall provide construction plans for stormwater management facilities and a drainage study certifying this condition is met. The Floodplain Administrator may require an upstream and/or downstream assessment in an area with known flooding problems or if development is proposed within 100 feet of a property line or shared access easement. The upstream and/or downstream assessment shall extend at least 1,320 feet beyond the property line, measured along the creek centerline.
- B. Development of a tract wholly or partially in Zone A or AE with total impervious cover of 40% or greater shall demonstrate through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development, when combined with all other existing and anticipated development, would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- C. Notice is hereby given that no person may divert or impound the natural flow of surface waters in a manner that damages the property of another by the overflow of the water diverted or impounded per Section 11.086 of the Texas Water Code. Claims of damages under the Texas Water Code may be addressed through civil litigation between property owners.

3.4.9 Subdivisions and Developments

- A. Subdivisions and Developments shall meet the Floodplain Development Permit requirements of Section 2.2E, Section 2.10, and ARTICLE 3.
- B. BFE data shall be generated in accordance with Section 3.1 for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 30 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Section 2.2A.

3.4.10 Debris and Other Encroachment

- A. Abandoned personal property, inoperable vehicles, trash, and other debris poses an imminent danger to public safety and shall not be stored or otherwise temporarily or permanently located within the 100-year floodplain boundaries.

Section 3.5 SPECIFIC STANDARDS - FLOODWAY

Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- A. Unless specified in (B) below, all permanent and temporary encroachments are prohibited, including but not limited to fill, manufactured homes, recreational vehicles, new construction, substantial improvements, inoperable vehicles, trash, debris, and other development within the adopted regulatory floodway.
- B. Grading, excavation, and water crossings for vehicular or pedestrian use within the adopted regulatory floodway may be permitted only if it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development, when combined with all other existing and anticipated development, would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

Section 3.6 COMPENSATORY STORAGE

Where compensatory storage is utilized, the developer shall offset new fill put in the floodplain by excavating an additional floodable area to replace the lost flood storage area. This shall be done at a hydraulically equivalent site. For example, fill put in below the 100-year flood elevation shall be compensated by removal of soil below that elevation elsewhere in the floodplain. All cut for compensatory storage shall be located outside the banks of all watercourses and drainage channels.

Section 3.7 PROJECTS INCREASING THE BASE FLOOD ELEVATION

Projects intended to reduce flooding, such as flood control reservoirs, may be permitted by the Floodplain Administrator under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations. The Floodplain Administrator may permit development within the adopted regulatory floodway or Zone AE that would result in an increase in BFEs, provided that the developer first completes all of the provisions required by Section 65.12.

ARTICLE 4 PROVISIONS FOR MAP CHANGES

Section 4.1 DEFINITIONS

1. Conditional Letter of Map Amendment (CLOMA) - FEMA's comment on whether a proposed project would be excluded from the SFHA shown on the effective FIRM map
2. Conditional Letter of Map Revision (CLOMR) - FEMA's comment on a proposed project that would affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway or effective BFE.
3. Conditional Letter of Map Revision based on Fill (CLOMR-F) - FEMA's comment on whether a proposed project involving the placement of fill would exclude an area from the SFHA shown on the FIRM map.
4. Letter of Map Amendment (LOMA) - an official amendment, by letter, to an effective FIRM map. A LOMA establishes a property's location in relation to the SFHA.
5. Letter of Map Revision (LOMR) - an official revision, by letter, to an effective FIRM map. A LOMR may change flood insurance risk zones, floodplain and/or floodway boundary delineations, planimetric features, and/or BFE.
6. Letter of Map Revision based on Fill (LOMR-F) - an official revision, by letter, to an effective FIRM map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

Section 4.2 LETTER OF MAP CHANGE

Floodplain Development permits are reviewed in accordance with the floodplain boundaries identified in Section 2.2 and the BFEs established in Section 3.1. A developer may revise such boundaries and elevations by submitting a Letter of Map Revision to FEMA for review and incorporation into the effective FIRM and/or FIS. The developer is responsible for all costs associated with LOMC preparation and approval.

4.2.1 Letter of Map Change Requirements

- A. A CLOMR is not required to be submitted but it is recommended to ensure the BFE's and/or SFHA may be revised as necessary for the project.
 1. A floodplain development permit for grading and horizontal site improvements related to the CLOMR may be approved after the CLOMR is reviewed and approved by FEMA.
 2. Permanent or vertical construction is not permitted until the LOMR is reviewed and approved by FEMA.
- B. In Zone A, a LOMR is required to be reviewed and approved by FEMA for Subdivisions or Developments greater than 30 lots or 5 acres prior to approval of a floodplain development permit.
- C. In Zone AE, a LOMR is required to be reviewed and approved by FEMA prior to approval of a floodplain development permit for any subdivision or development where a Hydrologic and Hydraulic Study is performed and demonstrates an increase in BFE, widening of the floodway, or shrinkage of the floodway compared to the effective FIRM Map.

CERTIFICATION OF ADOPTION

APPROVED: _____ (community official)

PASSED: _____ (adoption date)

ORDINANCE BECOMES EFFECTIVE: July 28, 2025 (effective date)

I, the undersigned, Daniel Jones, do hereby certify that the above is a true and correct copy of an ordinance duly adopted by Gillespie County, at a regular meeting duly convened on _____ .

Daniel Jones, Gillespie County Judge

ATTEST:

Lindsey Brown, Gillespie County Clerk

EXHIBIT 5



DANIEL JONES
County Judge

CHARLES OLFERS
County Commissioner
Precinct No. 1

KEITH KRAMER
County Commissioner
Precinct No. 2

CHUCK JENSCHKE
County Commissioner
Precinct No. 3

DON WEINHEIMER
County Commissioner
Precinct No. 4

December 10, 2025

Peregrine Energy Solutions, LLC
Attn: Hagen Lee, CEO
1495 Canyon Blvd, Ste 235
Boulder, CO 80302

VIA USPS Certified Mail and USPS First-Class Priority Mail

Subject: Notice of Stop Work Orders for the Rogers Draw BESS Project in Harper, Texas

Mr. Lee:

This letter serves as a formal notification from the Gillespie County Commissioners Court regarding the proposed Rogers Draw Battery Energy Storage System (BESS) Project within Gillespie County, Texas.

Gillespie County officials have issued two (2) separate stop work orders for the Rogers Draw BESS Project. Copies of both Orders are enclosed, along with supporting documentation.

Please direct any questions concerning compliance with the applicable codes and ordinances to the Gillespie County Engineer or the Gillespie County Fire Marshall, as appropriate. Thank you for your time and attention to this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "D. Jones", with a long horizontal stroke extending to the right.

Daniel Jones, County Judge

cc: State Fire Marshal's Office; LCRA; CTEC; TxDOT

101 W. Main, Unit 9
Fredericksburg, Texas 78624
830-997-7502
www.gillespiecounty.gov



GILLESPIE COUNTY ENGINEERING DEPARTMENT

101 West Main St. Room 105B Fredericksburg, TX 78624

12/5/2025

To: Garrett Sabino, Peregrine Energy Solutions

Re: Notice of Violation – Flood Damage Prevention Ordinance

Mr. Sabino,

This letter serves as official notice that construction activities have occurred on the Rogers Draw BESS project located at 22489 FM 2093 in Harper, Texas, in violation of the Gillespie County Flood Damage and Prevention Ordinance (“Ordinance”). As of December 4, 2025, County staff have observed the placement of a new LCRA utility pole on the subject property and have received information from CTEC that the installation of the pole is directly related to the Rogers Draw BESS project. Photos of pole installation taken on 12/4/2025 are attached hereto as Exhibit “A”. Section 2.4.1 of the Ordinance states that no structure or land shall be altered without full compliance with the terms of the Ordinance.

Based on the preliminary information received by the County to date for the Rogers Draw BESS project, the project is subject to compliance with the Floodplain Ordinance, including but not limited to Section 3.1.1.B which states that a development greater than 5 acres where the tract is wholly or partially within Zone A must determine the BFE’s by a detailed hydrologic and hydraulic study performed by the developer’s engineer and submit the hydrologic and hydraulic study to FEMA as a LOMR for review and approval. Developments with the entirety of the SFHA in an undeveloped open space may not be required to establish BFE’s if a drainage easement is established over the SFHA prohibiting any encroachments or development within the easement.

As of the date of this letter, none of the Section 3.1.1 requirements set forth above have been submitted to or approved by the County Floodplain Administrator. Since a finalized construction plan has not been received by the Floodplain Administrator, additional requirements may also apply depending on the scope of work proposed.

Effective Immediately:

- 1. Cease all construction activity within the Rogers Draw BESS project.**
2. Submit a Development Determination Form to the Floodplain Administrator for review of the scope of work as it relates to the requirements of the Floodplain Ordinance.
3. Submit a Floodplain Development Permit Application, including all documents listed on the Development Permit Checklist (this will be provided by the Floodplain Administrator after receipt of the Development Determination Form).

Failure to comply with this notice and/or cure this violation may result in enforcement actions. Penalties for non-compliance include, but are not limited to, fines of not more than \$500 for each violation. Each violation of the Ordinance and each day of a continuing violation shall constitute a separate offense. Additionally, the Commissioners Court of Gillespie County, Texas may take any other lawful action as is necessary to prevent or remedy any violation.

Please respond within 5 business days with your plan and timeline for bringing the project into conformance with the Ordinance. Feel free to reach out to me with any questions.

Respectfully,

A handwritten signature in black ink that reads "Melissa Eckert". The signature is written in a cursive, flowing style.

Melissa Eckert, PE, CFM
Gillespie County Engineer
meckert@gillespiecounty.org
830-307-6196

Attached:

Exhibit A: photos of pole installation taken 12/4/2025

EXHIBIT A: CONSTRUCTION OF UTILITY POLE ON PROJECT SITE





COUNTY FIRE MARSHAL ORDER TO STOP WORK

Location: Rogers Draw Energy Storage Project (22277 FM 2093 Harper, TX).

Date and time of incident: December 2025-Present

To: Peregrine Energy Solutions, LLC, and any occupants, operators, subcontractors, subsidiaries, agents, successors, and other persons responsible for violations listed herein (hereafter identified collectively as “Peregrine Energy Solutions”)

Peregrine Energy Solutions is HEREBY ORDERED TO STOP WORK at the Location and comply with all the requirements listed below. Under no circumstances may any work or construction continue at the Location until all requirements have been met, nor may any batteries for the Rogers Draw project enter Gillespie County until all requirements have been met.

Overview: Peregrine Energy Solutions must conform to all applicable National Fire Protection Association (NFPA) standards adopted by the State, per Texas Government Code 352. In December of 2025, an LCRA poll was constructed on the Rogers Draw Energy Storage Project property prior to any project plans being submitted to and approved by the Authority Having Jurisdiction (AHJ). The Gillespie County Commissioners Court, in its capacity as AHJ, has determined that Peregrine Energy Solutions is in violation of NFPA 1. This Order is being issued to confirm such finding, per NFPA 1.16.1.

Peregrine Energy Solutions is hereby ORDERED to conform with all applicable codes.

Current Violations:

1. NFPA 1 (2021 ed.)
 - a. Plans shall be submitted to the AHJ prior to construction (see Chapter 1, Section 1.7.12.2)
 - b. Prior to installation, plans shall be submitted and approved by the AHJ (see Chapter 52, Section 52.1.2.2).

- c. On October 24, 2025, the County sent correspondence to Peregrine Energy Solutions requesting pertinent documentation pursuant to NFPA 855. Peregrine Energy Solutions has not provided any substantive response to date.
- d. To date, no plans have been submitted by Peregrine Energy Solutions for approval by the AHJ.

This is not an all-inclusive list as it is the burden of Peregrine Energy Solutions to know, understand, and comply with applicable Federal, State and local codes, ordinances and laws.

Peregrine Energy Solutions is hereby ordered to stop work at the Location, and to comply with applicable State and local fire code requirements prior to commencing any further construction or work at the Location.

NOTICE - Texas Local Government Code Sec. 352.022 - PENALTY FOR FAILURE TO COMPLY WITH ORDER. An owner or occupant who is subject to an order issued under Section 352.016 or 352.0165 commits an offense if that person fails to comply with the order. Each refusal to comply is a separate offense. The offense is a Class B misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted two or more times under this section, in which event the offense is a state jail felony.

SIGNED on the 10th day of December 2025.

Respectfully,

Steve Olfers
Gillespie County Fire Marshall



Enclosures (2)



| Facility Information | Contact Information | Dept. Use Only |
|------------------------------------|---------------------|-----------------------|
| Name: | Name: | Date submitted: _____ |
| Address: | Phone Number: | Fee \$ _____ () paid |
| Phone Number: | Email Address: | Receipt # _____ |
| TYPE OF PERMIT AND SERVICES | | |

- | | | |
|--|--|--|
| <input type="checkbox"/> New Construction | <input type="checkbox"/> Certificate of Compliance | <input type="checkbox"/> Other 24-Hour Care Facility |
| <input type="checkbox"/> Fixed Pipe System | <input type="checkbox"/> Fireworks Stand | <input type="checkbox"/> Mass Gathering |
| <input type="checkbox"/> Fire Alarm System | <input type="checkbox"/> Fireworks Public Display | <input type="checkbox"/> Game Room |
| <input type="checkbox"/> Fire Protection Systems | <input type="checkbox"/> Mobile Food Unit | <input type="checkbox"/> Game Room (Machines) |
| <input type="checkbox"/> Pre-Submittal Plan Review | <input type="checkbox"/> Kitchen Hood System | <input type="checkbox"/> Teir II (Annual) |
| <input type="checkbox"/> Reinspection & Retesting | <input type="checkbox"/> Spray Booth Installation | <input type="checkbox"/> Re-inspection |
| <input type="checkbox"/> Duplicate Permit | <input type="checkbox"/> Hot Works (per project) | <input type="checkbox"/> OTHER _____ |
| <input type="checkbox"/> TABC License Inspection | <input type="checkbox"/> Foster Home/Group Home | |
| <input type="checkbox"/> Fire Watch/Standby | <input type="checkbox"/> Daycare Centers | |
| <input type="checkbox"/> Fire Sprinkler | <input type="checkbox"/> Hospital /Nursing Homes | |

Details regarding the above request must be provided when application is made and whenever request by the Fire Marshal. It is the applicant's responsibility to ensure that conditions are in accordance with the applicable codes and regulations. No work is to commence until plans are approved and a permit is issued. Violation of work without a permit can result in the issuance of a fine, permit revocation or both. Approved drawing, plans and/or details must always remain present at the location of the project.

Signature of Applicant: _____ Date: _____

☐ Inspection date: _____

☐ Re-inspection date(s): _____

☐ Re-inspection date(s): _____

Permit Approved by: _____

Date approved: _____

Steve Olfers, Gillespie County Fire Marshal



RESOLUTION REQUIRING HARPER BATTERY ENERGY STORAGE SYSTEM (BESS) DOCUMENTATION REQUIREMENTS

WHEREAS, Texas Local Government Code 352.016.(b) provides that in the absence of a county fire code, the county fire marshal may conduct an inspection using any nationally recognized code or standard adopted by the state; and

WHEREAS, Texas Local Government Code 352.016.(b-1) provides that in the interest of safety and fire protection, the county fire marshal shall, if required, and may, if requested, review the plans of a business, single-family residence, multi-family dwelling, or commercial property for fire or life safety hazards; and

WHEREAS, State Fire Marshal's Office (SFMO) currently adopts the 2021 National Fire Protection Association (NFPA) 1 Fire Code and the 2020 NFPA 855 Standard for the Installation of Stationary Energy Storage Systems; and

WHEREAS, 2020 NFPA 855 3.2.2 defines Authority Having Jurisdiction (AHJ) as an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure; and

WHEREAS, 2020 NFPA 855 4.1.2.1.1 provides that the plans and specifications associated with ESS (Energy Storage Systems) and its intended installation, replacement or renewal, commissioning, and use shall be submitted to the AHJ for approval and includes the Items (1) through (8) below; and

WHEREAS, 2020 NFPA 855 4.1.2.1.3 provides that the following test data, evaluation information, and calculations [set forth in Items (9) through (12) below] shall be provided in addition to the plans and specifications in 4.1.2.1.1 where required elsewhere in the standard; and

WHEREAS, the Rogers Draw Energy Storage Project (Harper BESS) is situated approximately 550 yards from the K-12 Harper ISD where the prevailing wind for 9 months out of the year would carry any highly toxic smoke produced by the Harper BESS directly towards the school and surrounding community; and

WHEREAS, the Harper BESS is situated approximately 610 yards from the Harper Head Start Preschool, where the wind could carry any highly toxic smoke produced by the Harper BESS towards the Preschool and surrounding community; and

WHEREAS, the Pedernales River riverbed is located inside the Harper BESS property and the

details of the site plan Peregrine Energy claims were developed to purposefully ensure that the headwaters of the Pedernales River remain unaffected by the project are unknown; and

WHEREAS, the Harper BESS will be the first Peregrine Energy Solutions first installation, and the battery supplier Wartsila's Quantum 2 modular battery system was reported on April 6, 2024 to have not been rolled out anywhere to date; and

WHEREAS, the Electric Power Research Institute (EPRI) 2024 White Paper entitled "Insights from EPRI's Battery Energy Storage Systems (BESS) Failure Incident Database" in May 2024 reported 81 incidents and information about root causes for 26 incidents; the breakdown of BESS failures by root cause was 36% Integration, Assembly & Construction, 29% Operation, 21% Design, and 14% Manufacturing; and nine more incidents have been added to date including the recent Moss Landing 300MW BESS fire that started on January 16, 2025; and

THEREFORE, BE IT RESOLVED THAT, the Commissioners Court of Gillespie County adopts this Resolution to proactively mitigate the safety and environmental risks associated with the Rogers Draw Energy Storage Project located in Harper, Texas, during the full life cycle of the Project by enforcing certain requirements related to the Authority Having Jurisdiction (AHJ) in the 2020 NFPA 855 Standard currently adopted by the State Fire Marshal's Office (SFMO); and

FURTHERMORE, BE IT RESOLVED THAT, the AHJ be defined as the Gillespie County Commissioners Court, and any designees, including the Gillespie County Fire Marshal; and

FURTHERMORE, BE IT RESOLVED THAT, the following plans and specifications associated with the ESS and their intended installation of the Rogers Draw Energy Storage Project, as outlined in 2020 NFPA 4.1.2.1.1, shall be submitted by Peregrine Energy Solutions, LLC, its agents, representatives, successors, subsidiaries, and assigns (collectively referred to herein as "Peregrine Energy Solutions, LLC"), to the AHJ for approval:

- (1) Location and layout diagram of the room or area in which the ESS (Energy Storage Systems) are to be installed.
- (2) Details on hourly fire-resistant-rated assemblies provided or relied upon in relation to the ESS
- (3) The quantities and types of ESS units
- (4) Manufacturer's specifications, ratings, and listings of ESS
- (5) Description of energy storage management systems and their operation
- (6) Location and content of required signage
- (7) Details on fire suppression, smoke or fire detection, gas detection, thermal management, ventilation, exhaust, and deflagration venting systems, if provided
- (8) Support arrangement associated with the installation

FURTHERMORE, BE IT RESOLVED THAT, the following use data, evaluation information, and calculations as outlined in 2020 NFPA 4.1.2.1.3, shall be provided by Peregrine Energy Solutions, LLC, to the AHJ:

- (9) Calculations or modeling data to determine compliance with NFPA 68 (Standard on Explosion Protection by Deflagration Venting) and NFPA 69 (Standard on Explosion Prevention Systems)
- (10) Large-scale fire test data
- (11) Hazard Mitigation Analysis (HMA)
- (12) Other test data, evaluation information, or calculations required elsewhere in this Standard.

Passed and approved this 24 day of February, 2025.



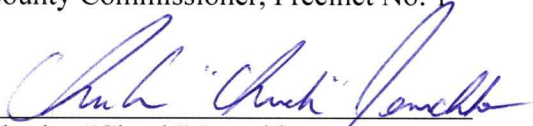
Daniel Jones,
County Judge



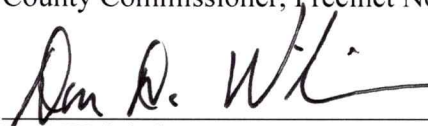
Charles Offers,
County Commissioner, Precinct No. 1





Keith Kramer,
County Commissioner, Precinct No. 2



Charles "Chuck" Jenschke,
County Commissioner, Precinct No. 3



Don Weinheimer,
County Commissioner, Precinct No. 4

Attest: 

Lindsey Brown
County Clerk



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Nikki Sims on behalf of Jeremiah Anderson

Bar No. 24040432

nsims@mcguirewoods.com

Envelope ID: 109376623

Filing Code Description: Plea To The Jurisdiction

Filing Description: Defendant Rogers Draw Plea Energy Storage, LLC's Plea to the Jurisdiction, General Denial, Counterclaims and Request For Temporary and Permanent Injunctive Relief

Status as of 12/22/2025 3:26 PM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
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