

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION  
ADMINISTRATIVE REVIEW CASE NO. 24-009**

**APPLICATION:** Application of Lewis Land LLC for an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 32.51-acre parcel in an SA (Special Agriculture) zone located in the 5400 block of State St SE, Salem (T7S; R2W; Section 29D; Tax Lot 2400).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

**EXPIRATION DATE:** This decision is valid only when exercised by **July 3, 2026** (two years) unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

**WARNING:** A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

**This decision does not include approval of a building permit.**

**CONDITIONS:**

1. The applicant shall obtain any and all permits, including any subsurface sewage disposal, as required by the Marion County Building Inspection Division.
2. The owner of a utility facility approved under this section shall be responsible for restoring to its former condition as nearly as possible any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.
3. The development shall significantly conform to the site plan submitted. Minor changes are allowed after review and approval by the Planning Director.
4. A 50-foot special setback shall be applied to all BESS equipment and structures from the property lines. This shall not include access roads, parking areas, light poles, fences, gates or similar infrastructure. It shall apply to all batteries and their enclosures and permitted structures.
5. Prior to the issuance of building permits, the applicants shall sign and record a Farm/Forest Declaratory Statement.

**OTHER PERMITS, FEES AND RESTRICTIONS:** This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying restrictions or conditions thereon. The applicant is advised of the following:

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision

to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **July 3, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 4, 2024**, unless appealed.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and zoned Special Agriculture (SA). Utility facilities necessary for public service are a use permitted subject to standards in the EFU zone.
2. The property is located on the southern side of State St SE, approximately 0.4 miles east of its intersection with Cordon Rd NE. The property currently contains an active nurse and associated greenhouses. The property was described by deed in volume 478, page 466 on August 4<sup>th</sup>, 1955 and is therefore, legal for land use purposes.
3. Surrounding uses are farm uses to the south and east, with those parcel zoned SA and in active farm production. To the west, are small acreage homesites and vacant farmland. To the north across State St are lands zoned Public (P) and Industrial (I) that contain a soccer club and PGE substation. This proposal will hook into the PGE substation via a connection from parcel 072W28C001200 which is zoned I and this use is outright permitted.
4. The applicants are proposing to place a battery energy storage system (BESS) on the site to store electricity for public use.
5. The subject property is comprised of approximately 100% high value soils.
6. Marion County Building Department commented:

“Permit(s) may be required to be applied for and issued prior to construction of the proposed fences and/or energy storage systems, as well as any structure over 250 square feet housing equipment, according to 2022 OSSC 101.2.1, 101.2.2.1, and Section 430. Consultation with a building plans examiner is recommended prior to application.”

### **ENGINEERING REQUIREMENTS**

1. Obtain an Access Permit for the proposed TL 2400 driveway. That driveway shall be shared with the Lewis Land Co. operation as a matter of access management policy that seeks to minimize the number of accesses on an Arterial road, and to meet minimum access spacing criteria. Therefore, the existing access shall be closed. It will be required to pave both that access approach, as well as TL 1200 existing access approach to the Beck’s Landing property being part of the development area.
2. Development of 0.5-acre or more requires stormwater detention.
3. A civil engineered plan set is required for review and approval prior to or at the time of application for building permits.
4. The subject property will be assessed Transportation System Development Charges (TSDCs) upon application for building permits.
5. Utility power main and service extensions in the public right-of-way require a permit from PW Engineering.

## ENGINEERING ADVISORIES

1. The Oregon DEQ NPDES Program regulates ground disturbances of 1.0-acre and above for construction stormwater erosion.
2. The local fire department will likely require a suitable fire truck turnaround within each compound

Marion County Fire District No.1 commented regarding fire code requirements. These can be found in full in the case file.

Friends of Marion County provided comments on the proposal, these can be found in full in the case file.

All other commenting agencies stated no objection to the proposal.

7. Battery Energy Storage Systems are a “Utility Facility Necessary for Public Use” as found in MCC 17.137.040. (I) the approval criteria are found below:

*I. Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the EFU zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors as found in OAR 660-033-0130(16):*

1. *Technical and engineering feasibility;*

The applicant examined lands around the PGE Bethel Substation for compatibility with the project. This analysis showed that many of the parcels were too small to accommodate the project or contains large streams or wetlands on the, that would make construction of a BESS impractical and require large amounts of wetland delineation, grading and site work. Additionally, the analysis found that many parcels were already developed with structures, businesses or dwellings and would not be candidates for a BESS. The subject property is not developed, contains no structures, is flat and contains no wetlands or streams. The criterion is met.

2. *The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*

Because of the location of the PGE Bethel Substation, the BESS facility needs to be located on SA lands. The closest lands inside the City of Salem are residential and currently a subdivision. To the north of the Bethel Substation are also residential lands that have been subdivided, as well as public zoned lands, but these appear too small for the applicant. To the west of the substation is a private soccer club and to the east is an industrial development. The applicant is using a small piece of industrial land to the east, but it is not large enough to accommodate the BESS in its full built out. This leaves the SA lands to the south of the substation. The subject property is largely undeveloped and makes a suitable candidate for this project. The parcel provides a direct route to the substation for the transfer of electricity. The criterion is met.

3. *Lack of available urban and nonresource lands;*

As explained above, the urban and nonrecourse lands are either too far away, too small or already built out to accommodate the BESS facility. The large public zoned parcel of land to the west of the substation is a private soccer club that is expanding with an indoor facility. To the east is an industrial park that is established and does not provide room for this proposal. The only lands which support this proposal are resource lands in this area. The applicants have also completed an alternatives analysis that can be found

in the case file. This analysis further supports the need to locate the facility on rural lands in close proximity to an existing PGE substation. The criterion is met.

4. *Availability of existing right-of-way;*

The property borders an existing right-of-way (State St) which is adjacent to the substation needed for connection. There are already power lines running down State St as well. The criterion is met.

5. *Public health and safety; and*

This location provides the ability for adequate setbacks, fire access and minimizes the conflicts with natural resources. The applicant states they will comply with all local building and fire codes and the facility does not produce any emissions or discharges. There is not expected to be any adverse impacts to public health and safety. The criterion is met.

6. *Other requirements of state and federal agencies.*

a. *Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.*

Cost was only one of the factors that the applicant analyzed for this project. The primary reasons were proximity to the existing PGE substation, parcels able to accommodate 15 acres of development and ones where easements were able to be agreed upon. The criterion is met.

b. *The owner of a utility facility approved under this section shall be responsible for restoring to its former condition as nearly as possible any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing upon a contractor the responsibility for restoration.*

The applicant states that they will comply with this section of code when the useful life of the facility is realized. The criterion is met.

c. *The applicant shall address the requirements of MCC 17.136.060(A)(1).*

MCC 17.136.060(A) (1) reads:

1. *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*

The BESS facility when completed, will have little to no traffic generated, not produce emissions, gasses nor will it interfere with accepted farm practices in the area. The facility essentially is a series of large boxes in a row that contains batteries and associated infrastructure to transfer electricity. Once built, it is not expected to create any conflicts with neighboring lands. The operation is quiet, does not create traffic and does not render adjacent lands less suitable for farm practices. The criterion is met.

d. *In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.*

No sewer system is proposed. The criterion does not apply.

*e. The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.*

The facility is not a natural gas pipeline. The criterion does not apply.

*f. If the criteria contained in this subsection (I) for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. For the purposes of this subsection:*

*i. "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.*

*ii. "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.*

The applicants understand and agree with the criteria. They have located the proposed line in a way that precludes the least amount of land from farm use and will work with property owners to minimize disruptions. The criterion is met.

*7. An associated transmission line shall be considered necessary for public service solely based on the criteria below:*

*a. "Associated transmission line" means a new transmission line constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.*

The proposal meets this criteria as it connects to a PGE substation. The criterion is met.

*b. An associated transmission line is necessary for public service if it is demonstrated to meet either subsection (I)(7)(b)(i) or (ii) of this section:*

*i. An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:*

*(A) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;*

*(B) The associated transmission line is co-located with an existing transmission line;*

*(C) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or*

*(D) The associated transmission line is located within an existing right-of-way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.*

The applicants state that the proposed transmission line is located entirely within the right-of-way of State St and does not cross high value farmland. The proposal meets criterion A and D. The criterion is met.

*ii. After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to subsections (I)(7)(b)(iii) and (iv) of this section, two or*

more of the following criteria:

- (A) Technical and engineering feasibility;
- (B) The associated transmission line is locationally dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land, to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
- (C) Lack of an available existing right-of-way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;
- (D) Public health and safety; or
- (E) Other requirements of state or federal agencies.

The proposal has meet section (I)(7)(b)(i) above and as such, does not need to meet section (ii). The criterion do not apply.

*iii. As pertains to subsection (I)(7)(b)(ii) of this section, the applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.*

The proposal has meet section (I)(7)(b)(i) above and as such, does not need to meet section (ii). The criterion do not apply.

*iv. The governing body of a county or its designee may consider costs associated with any of the factors listed in subsection (I)(7)(b)(ii) of this section, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.*

The proposal has meet section (I)(7)(b)(i) above and as such, does not need to meet section (ii). The criterion do not apply.

8. Because the land use in the vicinity is a mix of farming operations and rural residential housing, staff finds it appropriate to apply a 50-foot special setback to all BESS equipment and structures from the property lines. This shall not include access roads, parking areas, light poles, fences, gates or similar infrastructure. It shall apply to all batteries and their enclosures and permitted structures. This shall be made a condition of approval.
9. Because this use is being established in a farm zone, the applicants will be required to sign a Farm/Forest Declaratory Statement. This serves to notify the applicants that there are farm practices in the area that may conflict with their operations. This shall be made a condition of approval.
10. The applicants have also addressed the general conditional use review criteria. While not required in this application, this further addresses the impact mitigation they will perform at the site and strengthens their findings. This can be viewed in full in the case file.
11. Based on the above findings, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: June 18, 2024

If you have any questions regarding this decision contact Austin Barnes at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.