



**2025 Oregon Situs  
Request for Proposals  
(2025 OR Situs RFP)**

**ISSUED: October 13, 2025**

**BIDS DUE: November 18, 2025**

**PacifiCorp  
2025 OR Situs RFP  
Resource & Commercial Strategy  
[2025ORSitusRFP@pacificorp.com](mailto:2025ORSitusRFP@pacificorp.com)**

Table of Contents

SECTION 1. OVERVIEW ..... 5

    A. PURPOSE AND SCOPE OF RFP ..... 5

    B. INTERCONNECTION REQUIREMENTS ..... 6

    C. TRANSACTION TYPE ..... 7

    D. OPERATING CAPABILITIES OF THE RESOURCE ..... 7

SECTION 2. PROCEDURAL ITEMS ..... 8

    A. INDEPENDENT EVALUATOR ..... 8

    B. STANDARDS OF CONDUCT; SEPARATION OF FUNCTIONS..... 8

    C. CONFIDENTIALITY ..... 9

    D. PACIFICORP’S RESERVATION OF RIGHTS AND DISCLAIMERS ..... 9

SECTION 3. GENERAL INFORMATION AND LOGISTICS..... 10

    A. SCHEDULE ..... 10

    B. 2025 OR SITUS RFP BIDDER WORKSHOP ..... 11

    C. SUBMISSION OF QUESTIONS ..... 11

    D. SUBMISSION OF BIDS..... 11

    E. BID SUBMISSION FEES..... 13

    F. BID NUMBERING AND FILE NAMING CONVENTION ..... 14

    G. MINIMUM ELIGIBILITY REQUIREMENTS FOR BIDDERS..... 15

SECTION 4. RFP CONTENT AND SUBMITTAL INSTRUCTIONS..... 17

    A. ALL PROPOSALS..... 17

    B. GENERAL ORGANIAZATION OF THE BID SUBMITTAL ..... 18

    C. PPA AND ESA PROPOSALS..... 18

SECTION 5. RESOURCE INFORMATION ..... 19

    A. BID SUMMARY AND PRICING INPUTS..... 19

    B. RESOURCE PERFORMANCE ESTIMATE INFORMATION..... 19

    C. DIRECT INTERCONNECTION TO PACIFICORP’S SYSTEM (ON SYSTEM BIDS)..... 19

    D. TRANSMISSION SERVICE FOR DELIVERY TO PACIFICORP’S SYSTEM (OFF-SYSTEM BIDS) 20

    E. PACIFICORP NETWORK TRANSMISSION SERVICE ..... 20

    F. TAX CREDITS AND/OR FACILITY INCENTIVES ..... 20

    G. ACCOUNTING ..... 21

SECTION 6. BID EVALUATION AND SELECTION ..... 21

- A. OVERVIEW OF THE EVALUATION PROCESS ..... 21
- B. BID ELIGIBILITY: MINIMUM ELIGIBILITY REQUIREMENTS..... 22
- C. EVALUATION OF BIDDER’S ENERGY PERFORMANCE REPORT ..... 22
- D. NON-PRICE SCORING ..... 22
- E. PRICE SCORING ..... 22
- E. FINAL SCORING AND RANKING TO RECOMMENDED FINAL SHORTLIST ..... 25

SECTION 7. AWARDING OF CONTRACTS..... 26

- A. INVITATION ..... 26
- B. BASIS OF REJECTION ..... 27
- C. NON-RELIANCE LETTER ..... 27
- D. POST-BID NEGOTIATION ..... 27

SECTION 8. SECOND PHASE OF RFP ..... 27

## **APPENDICES**

APPENDIX A – TECHNICAL SPECIFICATIONS AND REQUIRED SUBMITTALS

APPENDIX A-2 – INTERCONNECTION STUDIES AND AGREEMENTS

APPENDIX A-3 – PERMITTING MATRIX

APPENDIX A-5 – FACILITY SINGLE-LINE DRAWING AND LAYOUTS

APPENDIX A-9 – PRODUCT DATA EQUIPMENT SUPPLY MATRIX

APPENDIX B-2 – BID PROPOSAL INSTRUCTIONS AND REQUIRED INFORMATION

APPENDIX C-1 – BID SUMMARY AND PRICING INPUT SHEET INSTRUCTIONS

APPENDIX C-2 – BID SUMMARY AND PRICING INPUT SHEET

APPENDIX C-3 – ENERGY PERFORMANCE REPORT

APPENDIX C-3.1 – WIND INPUTS

APPENDIX C-3.2 – SOLAR INPUTS

APPENDIX D – BIDDER'S CREDIT INFORMATION

APPENDIX D-1 – FORM OF LETTER OF CREDIT

APPENDIX E-1 – PPA FOR GENERATION ONLY

APPENDIX E-2 – PPA FOR GENERATION WITH ENERGY STORAGE

APPENDIX E-3 – ESA FOR ENERGY STORAGE

APPENDIX G-1 – CONFIDENTIALITY AGREEMENT

APPENDIX G-2 – NON-RELIANCE LETTER

APPENDIX I – STANDARDS OF CONDUCT; SEPARATION OF FUNCTIONS

APPENDIX J – SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO PACIFICORP

APPENDIX M – ROLE OF THE INDEPENDENT EVALUATOR

APPENDIX P – NON-PRICE SCORING QUESTIONNAIRE

APPENDIX R – BID SCORING MODELING

APPENDIX R-1 – BID SCORING EXAMPLE

APPENDIX S – CYBER SECURITY REQUIREMENTS

## SECTION 1. OVERVIEW

### A. PURPOSE AND SCOPE OF RFP

The PacifiCorp 2025 Integrated Resource Plan (IRP) established an action item to initiate a Request for Proposals (RFP) to procure resources for its Oregon customers that are aligned with the 2025 IRP preferred portfolio and that can achieve commercial operations by the end of December 2029.<sup>1</sup> The 2025 IRP calls for 1,570 megawatts of utility scale solar resources, 1,400 megawatts of utility-scale wind resources, and 320 megawatts of small-scale solar resources by the end of 2029. The 2025 IRP also calls for energy storage resources, including 509 megawatts of lithium-ion batteries with four-hour duration, and 272 megawatts of iron-air storage with 100-hour duration by the end of 2029. This RFP is seeking resources that are agnostic to both duration and technology type.

Consistent with these identified needs, the 2025 OR Situs RFP will accept and evaluate cost-competitive bids for resources with the following characteristics:

1. Minimum nameplate capacity of 1 megawatt;
2. Generates electricity from wind, photovoltaic (PV) solar, wave, geothermal, hydroelectric, biomass, or other sources of energy that support compliance with Oregon's House Bill 2021 emissions reduction requirements.
3. Storage resources (e.g., battery);<sup>2</sup>
4. Have a guaranteed commercial operation date (GCOD) on or before December 31, 2029;<sup>3</sup>
5. For Renewable Portfolio Standard (RPS)-eligible resources, the resources must be approved or certified by the Oregon Department of Energy as RPS-eligible generation resources (RPS Certification) within 90 days of commercial operation date (COD), and will maintain RPS Certification throughout the duration of any agreement with PacifiCorp;<sup>4</sup>
6. The bids submitted reflect firm pricing at the time of bid and pricing is held firm through June 22, 2026; and
7. The bids meet the minimum eligibility requirements of this RFP listed in [Section 3.G Minimum Eligibility Requirements for Bidders](#), and otherwise complies with the requirements of this RFP.

<sup>1</sup> PacifiCorp 2025 Integrated Resource Plan, Chapter 1, Action Item 2b.

<sup>2</sup> For bids including storage, additional criteria are in Appendix C-2 Bid Summary and Pricing Input Sheet.

<sup>3</sup> E.g., Section 11.1.2 in each of the two pro forma power purchase agreements. Commercial operation dates prior to December 31, 2029, must have a contract term that terminates no earlier than December 31, 2034.

<sup>4</sup> OAR 860-091-0030(1) Projects used to comply with the standard in ORS 469A.210(2) must be an Oregon Renewable Portfolio Standard-approved generator.

Questions about minimum eligibility requirements or any other questions concerning the information presented in this RFP issuance may be submitted to PacifiCorp at: [2025ORSitusRFP@pacificorp.com](mailto:2025ORSitusRFP@pacificorp.com) for clarification.

This document outlines the 2025 OR Situs RFP process and requirements. **PACIFICORP IS NOT BOUND TO ACCEPT ANY BIDS AND MAY CANCEL OR SUSPEND THIS SOLICITATION AT ANY TIME AND AT ITS OWN DISCRETION.**

## B. INTERCONNECTION REQUIREMENTS

Bidders submitting resources into the 2025 OR Situs RFP must demonstrate the ability of the bid resources to interconnect to a transmission or distribution system by providing one of the following: 1) a completed interconnection system impact study and/or facilities study, or, 2) for bids indicating interconnection service to PacifiCorp Transmission's system (on system bids), confirmation from PacifiCorp Transmission that bidder's proposed interconnection request has passed the screens as part of the Initial Review process or Supplemental Review process in the Fast Track Process for small generation interconnection service<sup>5</sup>, or 3) a signed interconnection agreement. An informational interconnection study is not sufficient interconnection documentation to be considered eligible for the 2025 OR Situs RFP.

For any bid that is proposing to interconnect to a third-party transmission system and secure transmission service to deliver the output of the resource to PacifiCorp at PACE or PACW, the bidder must provide 1) a completed system impact and/or facilities study by the third-party transmission provider, confirming ability to interconnect to the third party's transmission or distribution system, if such study or agreement is completed, and 2) satisfactory evidence<sup>6</sup> that long-term, firm, point-to-point transmission rights or Bonneville Power Administration's conditional firm bridge transmission rights, are already secured in bidder or project owner's name or readily obtainable by bidder to deliver the full output of the resource to PacifiCorp on or before December 31, 2029.

<sup>5</sup> "Fast Track Process", "screens", "Initial Review" and "Supplemental Review" are all described in PacifiCorp Transmission's Open Access Transmission Tariff (OATT).

<sup>6</sup> Transmission service documentation demonstrating ability to deliver to PacifiCorp's system is two-fold: first, long-term, firm transmission service or Bonneville Power Administration's conditional firm bridge transmission service, is available from a third-party transmission provider and second, the bidder has made a request to the third-party transmission provider to acquire long-term firm point-to-point transmission service or Bonneville Power Administration's conditional firm bridge transmission service, to PacifiCorp's system. Documentation must include copies of direct, dated correspondence from transmission service provider to the bidder, showing evidence of a request for transmission service, and the transmission provider indicating to the bidder that long-term, firm, uninterruptible transmission service or Bonneville Power Administration's conditional firm bridge transmission service, will be available for the bidder to procure, for a specified OATT service, and an identified MW capacity, point of receipt, point of delivery, and term. Dated correspondence must be at least within six (6) months of bid submittal.

### C. TRANSACTION TYPE

PacifiCorp is accepting qualified proposals for transactions using 1) existing resources from bidders who currently own or have legally binding rights to operate existing resources, and 2) new resources from bidders with development rights to construct new resources. PacifiCorp will accept bids in the 2025 OR Situs RFP from existing operating facilities subject to the following conditions:

1. Bidders cannot terminate an existing contract with PacifiCorp to bid into the 2025 OR Situs RFP; and
2. The existing contract must expire before the required on-line date as identified in a bidder's proposal, but no later than December 31, 2029; and
3. The submitted bid must meet all other requirements in the 2025 OR Situs RFP.

PacifiCorp will consider proposals with the following transaction structures:

1. **Power Purchase Agreement (PPA)** transaction for exclusive ownership by PacifiCorp of any and all energy, capacity, ancillary services (including reactive power) and environmental attributes associated with the generation (and storage if included in the bid). PacifiCorp will consider PPA terms between 5 and 20 years. PacifiCorp provides two forms of PPA: generation-only resources and generation resources collocated with a battery energy storage system (BESS) resource. With respect to collocated resources, the term length must be the same term for both the generation and the storage resource. PacifiCorp requires full dispatch control of the collocated or standalone battery (charge and discharge) as addressed in contractual terms in the applicable appendices to this RFP.
2. **Stand-alone Energy Storage Agreement (ESA)** transaction whereby PacifiCorp controls the output of a standalone storage resource (BESS, Pumped storage hydro (PSH) or other). PacifiCorp will consider energy storage agreement terms between 5 and 20 years.

In order to provide for a transparent and fair process, the RFP will be conducted under the oversight of an Independent Evaluator (IE) as further described in [Section 2.A Independent Evaluator](#). The IE will have been involved in the development of the RFP and will ensure the RFP process is conducted in a fair and reasonable manner. Potential bidders are invited and encouraged to contact the IE with questions or concerns. More information concerning the role of the IE is provided in **Appendix M – Role of the Independent Evaluator**.

### D. OPERATING CAPABILITIES OF THE RESOURCE

All bids must have the ability to comply with technical and operating specifications for Automated Generation Control (AGC) for automated signal operation and Automatic Voltage Regulation functionality and be capable of following a four second signal. Bidders must review and understand the North America Electric Reliability Corporation (NERC)

guidelines regarding technical requirements.<sup>7</sup> Additional information concerning AGC is in the pro forma PPA attached in **Appendix E-1 – PPA for Generation Only, Appendix E-2 – PPA for Generation with Storage, and Appendix E-3 for Energy Storage Agreement.**

## SECTION 2. PROCEDURAL ITEMS

PacifiCorp will evaluate proposals based on the following:

1. Conformance with the RFP minimum eligibility requirements,
2. Final score and ranking for each conforming bid, per Section 6 Bid Evaluation and Selection.
3. Technical design, feasibility, and compliance with the documentation in **Appendix A – Technical Specifications and Required Submittals**,
4. Ability to provide acceptable credit security as determined per **Appendix D – Bidder’s Credit Information**, and
5. Acceptance of the standard form PPA and/or ESA contract provided in **Appendix E-1 - PPA for Generation Only, Appendix E-2 - PPA for Generation with Storage, or Appendix E-3 - ESA for Energy Storage.**

### A. INDEPENDENT EVALUATOR

PacifiCorp is conducting the 2025 OR Situs RFP under the oversight of an IE. The IE will be retained by PacifiCorp on behalf of the Public Utility Commission of Oregon (Oregon Commission) as required by Oregon Administrative Rules § 860-89-200.<sup>1</sup> The IE will be involved in the RFP and provide oversight to ensure the RFP process is conducted in a fair and reasonable manner. Potential bidders are invited and encouraged to contact the IE with questions or concerns. More information concerning the role of the IE is provided in **Appendix M – Role of the Independent Evaluator.**

Contact information for the IE is as follows:

Independent Evaluators:
OREGON – PA Consulting Group, Inc.
2025AS_PAC_IE@paconsulting.com

### B. STANDARDS OF CONDUCT; SEPARATION OF FUNCTIONS

Each bidder responding to this RFP must conduct its communications and activities in recognition of PacifiCorp’s obligation to comply with the Federal Energy Regulatory

<sup>7</sup> Please refer to NERC, Improvements to Interconnection Requirements for BPS-Connected Inverter-Based Resources, September 2019.

Commission (FERC)'s Standards of Conduct for Transmission Providers in **Appendix I – Standards of Conduct; Separation of Functions**, which require the functional separation of PacifiCorp's transmission and merchant functions. Interconnection with or transmission service on PacifiCorp's system is arranged through PacifiCorp's transmission function, and not PacifiCorp's merchant function, which administers this RFP. As part of a bid submittal, bidders will be requested to execute a customer consent form provided in **Appendix J – Seller Authorization to Release Generation Data to PacifiCorp** that enables PacifiCorp's merchant function to discuss the bidder's interconnection and/or transmission service application(s) with PacifiCorp's transmission function.

#### C. CONFIDENTIALITY

Bidders will be required to execute a confidentiality agreement in the form provided in **Appendix G-1 – Confidentiality Agreement**. As provided in the form of confidentiality agreement, PacifiCorp will endeavor to maintain the confidentiality of all bids submitted, to the extent consistent with law or regulatory order. It is the bidder's responsibility to clearly indicate in its proposal what information it deems to be confidential and subject to the terms of the executed confidentiality agreement. Bidders may not mark an entire proposal as confidential, but bidders must mark specific information on individual pages to be confidential to receive confidential treatment for that information under the terms of the executed confidentiality agreement.

All information supplied to PacifiCorp or generated internally by PacifiCorp is and will remain the property of PacifiCorp. To the extent bidder receives information from PacifiCorp, bidder must maintain the confidentiality of such information and such information may not be provided to any third-party before, during or after this RFP process unless required by law or regulatory order.

#### D. PACIFICORP'S RESERVATION OF RIGHTS AND DISCLAIMERS

PacifiCorp reserves the right, without limitation or qualification and in its sole discretion, to reject any or all bids, and to terminate or suspend this RFP in whole or in part at any time. Without limiting the foregoing, PacifiCorp reserves the right to reject as non-responsive any or all bid proposals received for failure to meet any requirement of this RFP. PacifiCorp further reserves the right without qualification and in its sole discretion to decline to enter into any agreement with any bidder for any reason, including, but not limited to, change in regulations or regulatory requirements that impact PacifiCorp, and any evidence of collusive bidding or other anticompetitive behavior or conduct of bidders.

Bidders who submit bid proposals do so without recourse against PacifiCorp, its parent company, its affiliates and its subsidiaries, against any director, officer, employee, agent or representative of any of them, or against the Independent Evaluator, for any modification or withdrawal of this RFP, rejection of any bid proposal, or failure to enter into an agreement.

## SECTION 3. GENERAL INFORMATION AND LOGISTICS

### A. SCHEDULE

The proposed 2025 OR Situs RFP schedule is shown below and is subject to change.<sup>8</sup>

Event	Date
RFP issued to market and publicized	10/13/2025
Bidder workshop	10/21/2025
Last day for bidder questions to PacifiCorp and the IE	11/12/2025
Bid submissions due with pricing and issues list	11/18/2025
Staff/ IE proposals on model runs	12/2/2025
Staff hosted workshop on model runs	12/4/2025
Stakeholder comments on whether additional model runs are needed	12/18/2025
Staff/ IE final required model runs	1/6/2026
Bid evaluations, and IE review complete	4/1/2026
IE Report on final shortlist complete	4/14/2026
Commission acknowledgment	6/15/2026
Contracts finalized and executed <sup>9</sup>	6/22/2026
Issuance of Second Phase of RFP	8/15/2026
Guaranteed commercial operation date (GCOD)	12/31/2029

The schedule above is subject to change. Actual dates may vary for reasons that include, but are not limited to, negotiation time, availability of key personnel, regulatory delays, due diligence, the evaluation or negotiation of any issues unique to any bid, bidder, or facility. PacifiCorp is not responsible for any costs or damages to bidders alleged to be attributable to changes in the RFP schedule stated above. PacifiCorp is not obligated to develop a shortlist of bidders, to make a final selection, or to initiate or complete negotiations on any transaction.

The schedule above also reflects the expectation from the Oregon Public Utilities Commission Order No. 25-343: “We expect PacifiCorp to engage with Staff and stakeholders on their analysis, including providing additional model runs in the list

<sup>8</sup> Any schedule changes will be posted to PacifiCorp’s 2025 OR SITUS RFP website: <https://www.pacificorp.com/suppliers/rfps/2025-oregon-situs-rfp.html>

<sup>9</sup> This date is aspirational and contract execution may occur after this date.

development process, if necessary, and we reinforce the need for these analyses to support prudence review.”

**Bidders must be available for calls and meetings with PacifiCorp regarding bid submittals and be responsive to bid deficiency questions within two (2) business days.**

#### B. 2025 OR SITUS RFP BIDDER WORKSHOP

A bidder workshop will be scheduled and will cover the 2025 OR Situs RFP structure, deliverables, schedule, requirements, required forms and interconnection requirements. The bidder workshop will be scheduled as Microsoft Teams meetings for remote attendance. Additional details on the bidder workshop will be posted to the PacifiCorp website at <https://www.pacificorp.com/suppliers/rfps/2025-oregon-situs-rfp.html>.

#### C. SUBMISSION OF QUESTIONS

Bidders may submit questions related to this solicitation by email, and PacifiCorp will respond in a timely fashion. While PacifiCorp will maintain the confidentiality of the party posing questions, all questions as well as PacifiCorp’s response to questions will be posted on the PacifiCorp website at <https://www.pacificorp.com/suppliers/rfps/2025-oregon-situs-rfp.html>.

Bidders may submit questions to PacifiCorp and the IE by email at:

PacifiCorp: [2025ORSitusRFP@pacificorp.com](mailto:2025ORSitusRFP@pacificorp.com) and IE: [2025AS\\_PAC\\_IE@paconsulting.com](mailto:2025AS_PAC_IE@paconsulting.com)

All questions submitted to PacifiCorp will be shared with the IE.

#### D. SUBMISSION OF BIDS

Each proposal submitted must include a cover letter signed by one or more representatives with the requisite corporate or other organizational authority to approve and submit the bidder’s proposal.<sup>10</sup> Additionally, the cover letter must also include the following declaration, which may not be edited without the express approval of PacifiCorp:

“[Insert legal name of bidder] acknowledges receipt of PacifiCorp’s 2025 OR Situs Request for Proposal on or about [DATE]. The bidder makes the following representations to PacifiCorp:

1. All the statements and representations made in this proposal are true to the best of the bidder’s knowledge and belief.

<sup>10</sup> If the proposal is bid under a partnership, the partnership must be fully established, including a legally binding agreement among the partners (not a letter of intent), before submission of a proposal under this RFP. Each partner must be bound to comply with the terms of this RFP and the proposal. The signature of each partner must be included on the cover letter, along with their contact information (i.e., company name, phone number, email address, etc.). The proposal must include evidence documenting the legal and binding partnership.

2. The bidder possesses ownership of, leasehold interest in, right to develop site, or valid title to property on which the resources included in this bid are located.
3. The bidder possesses or will obtain all required permits to site, construct and operate applicable facility(ies) under the bid.
4. The bidder agrees to comply with **Appendix S – Cyber Security Requirements**.
5. The bidder holds PacifiCorp harmless for all development activities related to the applicable facility(ies) under the bid.
6. With respect to any new facility(ies) sited and constructed in Oregon under the bid, the bidder understands the requirements in ORS 757.306<sup>11</sup> and will provide required attestations or Project Labor Agreements under ORS 469A.210 within 30 days of the date of construction begins.
7. The bidder agrees to report diversity representation by contractors.
8. With respect to any existing facility(ies) under the bid, the bidder has obtained RPS Certification. With respect to any new facility(ies) to be constructed under the bid, the bidder will apply for and obtain RPS Certification within 90 days of COD. In either case, the bidder agrees it will maintain the RPS Certification for the full term of the PPA.
9. Bid pricing takes into account the risk profile and other terms and conditions of the transaction documents in **Appendix E-1 PPA – for Generation Only, Appendix E-2 – PPA for Generation with Storage, or Appendix E-3 - ESA for Energy Storage**, as currently drafted without modification.
10. This proposal is a firm and binding proposal through June 22, 2026.

**PACIFICORP IS ACCEPTING ONLY ELECTRONIC COPIES OF A BID AND WILL NOT  
ACCEPT HARD COPIES.**

For each individual bid, the bidder must submit one (1) electronic copy of the bid, sent to the RFP email address and IE email address specified below. The bid must include any required forms in PDF format and Microsoft Excel format, including all appendices and exhibit sheets. Hard copy submittals will not be accepted.

Each bid must be submitted as a separate document. For example, three separate bids must be sent in three separate emails.

<sup>11</sup> A person who constructs or repowers a large-scale project sited in Oregon will, at the time of contract finalization for development of the project or execution of a contract for delivery of energy from the project, provide a signed attestation or declaration stating to the best of their knowledge and belief, subject to penalty of perjury as described in ORS 162.065, that during all periods of construction all contractors and subcontractors working on the construction or repowering project will have done certain things related to apprenticeship programs, diversity hiring outreach, anti-employee harassment policies, and other required measures as required by ORS 757.306. ("Large-scale project" means a renewable energy generation, sequestration or storage facility with a capacity rating of 10 megawatts or greater.)

Submit bid(s) via email to:

PacifiCorp: [2025ORSitusRFP@pacificorp.com](mailto:2025ORSitusRFP@pacificorp.com) and IE: [2025AS\\_PAC\\_IE@paconsulting.com](mailto:2025AS_PAC_IE@paconsulting.com)

Bidders must be aware of file size when delivering the electronic copy of their bids. PacifiCorp suggests limiting the size of each email with attached files to no more than 20 MB to ensure email delivery. Bidders may submit multiple emails for their bids and must label the emails accordingly (i.e. "1 of 3...", "2 of 3...", "3 of 3...").

PacifiCorp will respond with email(s) confirming receipt.

Bids will be accepted until 5:00 p.m. Pacific Prevailing Time on November 18, 2025.

PacifiCorp will not accept any late proposals. Any bids received after dates and times stated above will be deleted.

All bid proposals will have a bid validity date through 5:00 p.m. Pacific Prevailing Time, June 22, 2026.

Each bid submission must include all the requirements listed in Section 4 RFP Content and Submittal Instructions of this RFP document.

E. BID SUBMISSION FEES

<b>Fee</b>	<b>Amount</b>	<b>Activity</b>	<b>Refundable/Non-Refundable</b>
<b>Due by bid submission due date</b>			
Bid Submission Initial Fee	\$10,000	This initial fee covers costs associated with minimum eligibility requirements screening, bid modeling, bid evaluation and bid scoring for each distinct RFP.	Non-refundable. Due at the bid submission due date.
Bid Fee - Independent Energy Performance Report Evaluation	\$10,000	A fee of \$10,000 will be used to cover the cost associated with a forecast generation evaluation conducted by an independent consultant hired by PacifiCorp.	Non-refundable. Due at the bid submission due date.

		<p>**This fee is not required for a standalone battery bid and will be waived for bidders for whom this Independent Energy Performance Report Evaluation has already been obtained within the last two years for this same resource.</p>	
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The Bid Fees will be used to cover the costs incurred by PacifiCorp in analyzing the proposals, including the costs of the IE and legal advisors.

Payment of Bid Submission Initial Fees.

Bid submission initial fees must be paid upon bid submission via wire transfer to PacifiCorp. Wire instructions provided upon request to parties who intend to submit bids. No cashier's checks will be accepted. As a bid requirement, when the bid is submitted, bidders must provide documentation of submitted bid submission initial fee and bid fee- independent energy performance report evaluation, such as a PDF receipt of the wire transfer or wire transfer confirmation number. The bid submission initial fee is non-refundable.

Bidders are responsible for all bid fees and all costs and expenses of any response to PacifiCorp in connection with its proposal for the 2025 OR Situs RFP. Such expenses may include but are not limited to 1) 2025 OR Situs RFP bid submission initial fees, 2) Bidder's fees paid for additional studies, 3) Bidder's cost of providing additional information, and bidder's own expenses in negotiating and reviewing any documentation. **PACIFICORP WILL HAVE NO LIABILITY OR OBLIGATION TO RETURN AMOUNTS PAID BY BIDDERS IN THE EVENT OF PACIFICORP'S REJECTION OF ANY PROPOSAL, REGARDLESS OF ANY RELIANCE BY BIDDERS ON ANY COMMUNICATION RECEIVED FROM PACIFICORP OR ANY OTHER REASON, UNDER ANY LEGAL THEORY OR PRINCIPLE OF EQUITY.**

F. BID NUMBERING AND FILE NAMING CONVENTION

Bid numbers will be self-assigned by bidders in accordance with the directives below. There is no limit to the number of bids that may be submitted, subject to having paid the applicable bid submission initial fee(s) and bid fee – independent energy performance report evaluation,) in accordance with Section 3.E Bid Submission Fees.

Different bids must be expressed as a whole number, beginning with the number 1. Each subsequent bid will have a separate sequential bid number (i.e., 2, 3, etc.). Each bid will have a corresponding bid number which must be used to identify a corresponding **Appendix C-2 – Bid Summary and Pricing Input Sheet**. For example, the first bid will be identified as “1” and subsequent bids will be identified as “2”.

File names must be kept short by using abbreviations wherever possible. All required documents must use the following naming convention:

*[abbreviated bidder name]\_[bid number]\_[abbreviated\_file\_description]*

#### G. MINIMUM ELIGIBILITY REQUIREMENTS FOR BIDDERS

Bidders may be disqualified for failure to comply with the RFP if any of the requirements outlined in this RFP are not met to the satisfaction of PacifiCorp, as determined in PacifiCorp’s sole discretion. If bids do not comply with these requirements, PacifiCorp has the option to deem the bid non-conforming and eliminate it from further evaluation. Reasons for rejection of a bidder or its bid include, but are not limited to:

1. Receipt of any bid after the bid submittal deadline.
2. Failure to submit the required bid submission initial fee and bid fee – independent energy performance report evaluation when due.
3. Failure to meet the requirements described in this RFP and provide all information requested in **Appendix C-2 – Bid Summary and Pricing Input Sheet** of this RFP.
4. For RPS-eligible resources, failure to receive RPS Certification within 90 days of COD and maintain RPS Certification throughout the duration of any agreement with PacifiCorp.
5. Bids for ineligible resources. Only bids for resources specified in Section 1.A Purpose and Scope of RFP will be accepted. All submissions must conform to the documentation in **Appendix A – Technical Specifications and Required Submittals**.
6. Failure to adequately demonstrate the viability of and a commitment to GCOD on or before December 31, 2029.
7. Failure to execute **Appendix G-1 – Confidentiality Agreement** and permit disclosure of information contained in the proposal to PacifiCorp’s agents, contractors, regulators, or non-bidding parties to regulatory proceedings consistent with terms of executed confidentiality agreement.
8. Any attempt to influence PacifiCorp in the evaluation of the proposals outside the solicitation process.
9. Failure to provide a firm proposal through the bid validity date outlined in Section 3.D Submission of Bids of this RFP.

10. Failure to disclose the commitment of any portion of the proposed resource to another entity.
11. Failure to disclose the real parties of interest in any submitted proposal.
12. Failure to clearly specify all pricing terms for each proposal.
13. For bids using on-system resources, failure to provide either 1) a completed system impact and/or facilities interconnection study, or 2) confirmation of having passed screens (see Section 1.B Interconnection Requirements), or 3) a signed generation interconnection agreement, confirming ability to interconnect to PacifiCorp's transmission or distribution system.
14. Failure to offer the product delivered to a point of interconnection or point of delivery on PacifiCorp's transmission or distribution system.
15. For any bid that is proposing to interconnect to a third-party transmission system, failure to meet the requirements in Section 1.B Interconnection Requirements.
16. Failure to demonstrate and describe in sufficient detail the bidder's ability to adequately acquire or purchase major equipment (i.e., wind turbines, solar photovoltaic panels, inverters, tracking system, generator step-up transformers, batteries) and other critical long-lead time equipment.
17. Failure to demonstrate that the bidder can meet the credit security requirements.
18. Failure to demonstrate that the bidder can meet the scheduled commercial operation date proposed.
19. Failure to submit information required by PacifiCorp to evaluate the proposal.
20. A determination by PacifiCorp that collusive bidding or any other anticompetitive behavior has occurred.
21. The bidder, or facility proposed in the bid is involved in bankruptcy proceedings.
22. Failure of the authorized officer of the bidder to sign the proposal cover letter as required in this document and without edits.
23. Any change in law or regulatory requirements that make the bidder's proposal non-conforming.
24. Failure to provide the resource performance estimate information as described in Section 5.B Facility Performance Estimate Information of the RFP.
25. Failure to provide a performance report and model output including hourly output values as identified in **Appendix C-3 – Energy Performance Report**.
26. Failure to provide **Appendix D – Bidder's Credit Information**.

27. Bid submission that includes a requirement that PacifiCorp provide credit assurances.
28. Failure to provide documentation of binding, exclusive site control for the applicable facility(ies).<sup>12</sup>
29. Bid submission with a facility(ies) description that is inconsistent with the facility(ies) description in existing interconnection study and/or executed generator interconnection agreement. In the event changes have been made to the proposed facility bid as compared to what is described in the current interconnection documentation, Bidder will need to provide documentation from interconnection provider that a material modification or interconnection restudy is not required that could materially impact the facility costs or estimated in-service date.
30. With respect to Oregon-sited resources, failure to agree to provide attestations or Project Labor Agreements as specified by ORS 469A.210 and in provisions in the pro forma contract agreements.
31. Failure to agree to track and report to PacifiCorp the bidder's use of diverse businesses.
32. Failure to comply with co-location/proximity requirements where the nameplate capacity rating of multiple resource bids, in the aggregate, exceeds the 80 megawatts threshold in OAR 860-089-0100(1)(c).
33. For bids representing generation co-located with storage, failure to: demonstrate the storage facility's ability to allow PacifiCorp to dispatch and charge the storage facility from the grid; and failure to provide adequate plans for (a) recycling all battery energy storage equipment, to the extent required to be in compliance with applicable laws and prudent practices, (b) fire protection with respect to the storage facility and (c) emergency response, in compliance with all applicable requirements of law and in accordance with prudent electrical practices.

## SECTION 4. RFP CONTENT AND SUBMITTAL INSTRUCTIONS

### A. ALL PROPOSALS

This section outlines the content and format requirements for all proposals. Bids that do not include the information requested as described in this section may, at the sole discretion of PacifiCorp, be deemed ineligible for further evaluation if the bidder does not provide information within two (2) business days of a request by PacifiCorp. PacifiCorp may deem information not relevant as determined by PacifiCorp in its sole discretion. All sections must be complete and in compliance with the RFP Section 3 General Information and Logistics for the bid to be accepted.

<sup>12</sup> Site control for the 2025 OR SITUS RFP requires a definitive, exclusive and binding lease or purchase agreement or option agreement.

## B. GENERAL ORGANIZATION OF THE BID SUBMITTAL

**Appendix B-2 – Bid Proposal Instructions and Required Information** outlines the proposal instructions and requirements for submitting a bid. Each item listed in the appendix document is required unless it is specified as optional. Bids that are missing any of the required submittals identified in Appendix B-2 may be deemed ineligible for this RFP.

## C. PPA AND ESA PROPOSALS

For new or existing generating and or storage facilities, PacifiCorp will consider transaction structures whereby the bidder develops the facility, assumes responsibility for construction and sells the power (and non-power attributes) and or storage services to PacifiCorp on a long-term basis, pursuant to the terms of a standard-form PPA or ESA, which will include certain performance guarantees. The bidder will be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction, interconnection and long-term asset management and operational costs. Without limiting the foregoing, the bidder will be responsible for obtaining all permits, rights and resources required to construct and operate the generation facility consistent with the bidder's proposal.

Bidders must demonstrate the facility's interconnection studies and interconnection agreement are consistent with the proposed renewable resource equipment, capacity, configuration, and that the interconnection agreement scheduled commercial operation date is aligned with the bid's scheduled commercial operation date, and that no material modification<sup>13</sup> or interconnection restudy will be required. PacifiCorp will consider bids where the interconnection study reflects a commercial operation date (COD) before the end of 2029, even if the COD proposed in the bid is not exactly aligned. In such cases, PacifiCorp will consult with PacifiCorp Transmission to determine whether the interconnection study adequately supports the interconnection needs of the proposed resource. However, to ensure compliance with House Bill 2021, both the COD reflected in the interconnection study and the COD proposed in the bid must fall before the end of 2029.

If a proposed resource intends to interconnect to a third-party transmission system, the bidder will be responsible under the PPA or ESA to arrange and maintain long-term firm point-to-point transmission service or Bonneville Power Administration's conditional firm bridge transmission service to deliver the full output of the PPA or ESA to a designated point of delivery on PacifiCorp's transmission or distribution system. Bidders must clearly articulate the point of delivery in their bid and include any and all third-party transmission service costs in their PPA or ESA price (see Section 3.G of Minimum Eligibility Requirements for Bidders).

The bidder's proposal must be priced to the standard-form pro forma documents supplied in **Appendix E-1 – PPA for Generation Only, Appendix E-2 – PPA for Generation with Storage, and Appendix E-3 – Energy Storage Agreement** as applicable. Note that the pro

<sup>13</sup> As defined in PacifiCorp Transmission's Open Access Transmission Tariff (OATT).

forma agreements are tailored for new facilities and specific technologies; conforming changes may be required by PacifiCorp for existing facilities or other types of facilities.

Bidders are required to provide an issues list (“Issues List”) and redlines to PacifiCorp and the IE by the date of bid submittal. In accordance with OAR 860-089-0250(3)(d), PacifiCorp will engage in contract negotiations that are mutually agreeable with bidders that make the final shortlist.

## SECTION 5. RESOURCE INFORMATION

### A. BID SUMMARY AND PRICING INPUTS

Bidders must review and follow the instructions in **Appendix B-2 Bid Proposal Instructions and Required Information**, **Appendix C-1 – Bid Summary and Pricing Input Sheet Instructions** and **Appendix C-2 – Bid Summary and Pricing Input Sheet**. Appendix C-2 is an Excel-based workbook that covers bid summary information, energy production profile, and pricing requirements.

### B. RESOURCE PERFORMANCE ESTIMATE INFORMATION

Bidders are required to provide a facility performance estimate prepared by a third-party expert. PacifiCorp may accept an in-house energy performance report contingent upon PacifiCorp being able to replicate the results. The 8,760 hourly profile in **Appendix C-2 – Bid Summary and Pricing Input Sheet** is expected to be consistent with or supported by the bidder’s provided facility performance estimate as part of Appendix C-3 referenced below.

**Appendix C-3 – Energy Performance Report** provides detailed directions for resource performance information by resource type.

### C. DIRECT INTERCONNECTION TO PACIFICORP’S SYSTEM (ON SYSTEM BIDS)

All bidders are required to have met the interconnection requirements described in Section 1.B Interconnection Requirements. Any completed PacifiCorp Transmission interconnection study is to be included in **Appendix A-2 – Interconnection Studies and Agreements**. Off-system bidder requirements for interconnections are discussed in Section 5.D Transmission Service For Delivery to PacifiCorp’s System (Off-System Bids) below. PacifiCorp will review the bidder’s interconnection documentation to confirm it aligns with the bidder’s submitted bid.

Bidders must document in their bid and otherwise provide all estimated interconnection costs identified in their interconnection studies and agreements, including direct assigned and network upgrade costs. Bid prices will include any estimated direct-assigned interconnection costs but will exclude the estimated network upgrades costs. Although the network upgrade costs are not to be included in the bid price, the network upgrade costs will be provided to PacifiCorp and included in the utility’s valuation models.

#### D. TRANSMISSION SERVICE FOR DELIVERY TO PACIFICORP'S SYSTEM (OFF-SYSTEM BIDS)

Any off-system bid must, in addition to meeting the interconnection requirements described in Section 1.B Interconnection Requirements, meet all of the minimum eligibility requirement, including requirement #14 in Section 3.G Minimum Eligibility Requirements for Bidders. The off-system bid must reasonably demonstrate that the full proposed output of the resource, as identified in the bid, can be delivered by December 31, 2029.

Off-system bidders are responsible for any current or future third-party tariff requirements or tariff changes related to, but not limited to, any of the following: interconnection, variable energy resource, electric losses, reserves, transmission, integration, imbalance, scheduling, and ancillary service arrangements required to deliver to the bidder's selected point of delivery on PacifiCorp's transmission or distribution system. These costs will not be included in the evaluation of PPA proposals as they are assumed to be the responsibility of the bidder.

Off-system bidders must include in submitted bid prices all interconnection costs from the third-party interconnection provider, whether from a study or a signed interconnection agreement. Off-system bidders must also include in their bid price the estimated costs for all third-party transmission service.

In the event an off-system bid is awarded an agreement, such agreement will include appropriate provisions reflecting the bidder's obligation to timely arrange and maintain the necessary third-party, long-term firm, transmission service or Bonneville Power Administration's conditional firm bridge transmission service, facilitating delivery of the full output of the resource to the identified point of delivery, including associated events of default for failure to comply with such requirements.

#### E. PACIFICORP NETWORK TRANSMISSION SERVICE

PacifiCorp will request Designated Network Resource (DNR) service to serve PacifiCorp network load once a definitive agreement is fully executed.

#### F. TAX CREDITS AND/OR FACILITY INCENTIVES

Bidders bear all risks, financial and otherwise, associated with their or their facilities' eligibility to receive any state or federal energy tax credits, sales tax waivers or exemptions, payment in lieu of tax, or any other identified tax- or accounting-related, incentive, or benefit, including in the event of a change in tax law. The obligations of a bidder to perform under any executed agreement at the bid pricing resulting from this solicitation remain effective and binding regardless of whether a bidder or facility is eligible for or receives tax credits or other tax- or accounting-related incentives or benefits. Bidders must explain in their submitted **Appendix B-2 Bid Proposal Instructions and Required Information** whether a bid is dependent upon Production Tax Credits (PTC) or Investment Tax Credits (ITC).

## G. ACCOUNTING

All proposals will be assessed for appropriate accounting and tax treatment. Bidders must supply all information reasonably required to make these assessments if a facility is selected to the final shortlist. According to Generally Accepted Accounting Principles, PacifiCorp will establish and maintain accounts for the revenue, expenses, assets, liabilities and owners' equity associated with all resource facilities acquired through this RFP and will ensure that all revenues and all expenses associated with the management and ownership of the resource(s) are properly recorded to these accounts. This will include expenses associated with work performed by PacifiCorp personnel. Additionally, PacifiCorp will account for the power costs associated with the resource(s) in a separate account(s).

# SECTION 6. BID EVALUATION AND SELECTION

## A. OVERVIEW OF THE EVALUATION PROCESS

PacifiCorp's bid evaluation and selection process is designed to identify the combination and amount of new resources that will maximize customer benefits through the selection of bids that will satisfy projected capacity and energy needs while maintaining reliability. The method for evaluating resources will be transparent, fair, and consistent with how market bids are evaluated with additional oversight by the IE.

The 2025 IRP selected individual resources and optimized a preferred portfolio from a list of generic "proxy" resources to reliably meet PacifiCorp's energy and capacity needs across its six-state service territory. The PLEXOS portfolio optimization model that PacifiCorp will use to evaluate the 2025 OR Situs RFP bids was also used to develop PacifiCorp's 2025 IRP. PacifiCorp uses PLEXOS to serve as a decision support tool that can be used to guide prudent resource acquisition paths that maintain system reliability at a reasonable cost.

At a high level, the 2025 OR Situs RFP evaluation process involves, among other considerations:

1. Bid screening based on minimum eligibility requirements.
2. Identification of interconnection network upgrades.
3. Validation of bidder's generation profile.
4. Non-Price Scoring based on **Appendix P – Non-Price Scoring Questionnaire**.
5. Price Scoring:
  - a. Bid preparation for input into PLEXOS.
  - b. PLEXOS modeling, including bid selection, portfolio optimization, reliability testing, price-policy scenario analysis, stochastic risk analysis and price scoring.
6. Combination of price and non-price scoring and ranking of preferred resources:
  - a. Price Scoring - Weighted eighty (80) percent based on the net cost of the bid; i.e., highest benefit or lowest cost.

b. Non-Price Scoring – Weighted twenty (20) percent

7. Final shortlist of proposals for pursuing contract negotiation.

Additional details regarding the 2025 OR Situs RFP evaluation process and cost-ranking methodology is provided below.

Methodology for scoring bids using Bonneville Power Administration’s conditional firm bridge transmission service is provided in Appendix R – Bid Scoring Modeling.

#### B. BID ELIGIBILITY: MINIMUM ELIGIBILITY REQUIREMENTS

Upon receipt all bids will undergo screening to assess compliance with the minimum requirements and overall conformance with the RFP. After IE review and consultation, non-conforming bids will be notified and given five (5) business days to correct the deficiencies. Failure to do so may result in removal from further consideration.

#### C. EVALUATION OF BIDDER’S ENERGY PERFORMANCE REPORT

An independently prepared evaluation of bidder’s energy performance report will be produced for each bid.

#### D. NON-PRICE SCORING

Eligible bids will be evaluated based on responses to the **Appendix P - Non-Price Scoring Questionnaire**.

PacifiCorp confirms that the non-price scoring is compliant with OAR 860-089-0400(2), non-price factors. Non-price scores primarily relate to resource characteristics identified in the Company’s most recent acknowledged IRP Action Plan and reflect standard form contracts. Non-price score criteria that seek to identify minimum thresholds for a successful bid have been converted into minimum bidder requirements.

#### E. PRICE SCORING

a. Bid Preparation into PLEXOS and Resource Shaping

All eligible bid resources will be prepared and uploaded into PLEXOS. PacifiCorp uses its proprietary Excel models to process bid costs for input to PLEXOS modeling with oversight by the IE.

Consistent with the treatment of capital revenue requirement in PacifiCorp’s IRP modeling, PacifiCorp will convert any calculated revenue requirement associated with capital costs, as applicable (i.e., return on investment, return of investment, and taxes) to first-year-real-levelized costs. Consistent with the treatment of non-capital revenue requirement in PacifiCorp’s IRP modeling, all other bid costs will be summarized in nominal dollars and formatted for input into the bid evaluation models.

PacifiCorp's proprietary Excel model will calculate the delivered revenue requirement cost of each eligible bid, inclusive of any applicable carrying cost and net of tax credit benefits, all operations and maintenance expenses, property taxes, generation taxes, direct assigned interconnection costs and PacifiCorp Transmission estimated network upgrade costs, as applicable. In developing the delivered cost for each bid, PacifiCorp requires certain cost data as inputs to the bid preparation model.

#### Summary of Cost Components for a PPA

- i. PPA Price Schedule
- ii. Storage Costs (monthly capacity payment)
- iii. Network Upgrade Revenue Requirements

Any internal assumptions for key financial inputs (i.e., inflation, discount rates, marginal tax rates, asset lives, AFUDC rates, etc.) and PacifiCorp carrying costs (i.e., integration costs, owner's costs, etc.) will be applied consistently to all bids, as applicable, and reviewed by the IE prior to finalizing the bid preparation model for PLEXOS. Bids with different price structures and terms will be normalized prior to uploading into PLEXOS.

Upon bid submittal, PacifiCorp will engage a third-party to evaluate resource performance and degradation schedules. The third-party subject matter expert will provide data for input into the PLEXOS model, consistent with Oregon rule 860-089-0400 5(a).

#### b. PLEXOS Analysis: Bid Selection and Portfolio Optimization

The bid evaluation team will evaluate the bids using PLEXOS, the same production cost models used in the 2025 IRP. The PLEXOS production cost model will select the optimized portfolio of resources proposed as part of the 2025 OR Situs RFP.

PacifiCorp will summarize for the IE how the bid evaluation models function, and the IE will be provided with the inputs and outputs of PLEXOS model runs used during the evaluation process.

##### i. Bid Resource Portfolio Development

The PLEXOS model is used to develop an optimized portfolio of resources and candidates for the final shortlist. PacifiCorp uses PLEXOS to develop, test and evaluate the cost of multiple resource portfolios including sensitivities to understand the relative performance of portfolio and resource alternatives under certain conditions.

##### ii. Reliability Tests

PacifiCorp will perform a reliability assessment to ensure that the selected portfolio of resources can meet all hourly load and operating reserve requirements with sufficient margin<sup>14</sup> to account for other system uncertainties such as non-normal weather events. If incremental flexible resource capacity be required to maintain system reliability, the shortfall will be provided to the model to ensure it selects sufficient capacity to achieve the targeted reliability requirements.

iii. Price Policy Scenarios and Risk Analysis

PacifiCorp evaluates portfolios under a range of different environmental policy and market price scenarios (policy-price scenarios).<sup>15</sup> PLEXOS calculates the stochastic mean present value revenue requirement (PVRR) and the risk-adjusted PVRR for various policy-price scenarios to help identify whether top-performing portfolios exhibit especially poor performance under the range of scenarios. PacifiCorp summarizes and analyzes the portfolios to identify the specific bid resources that are most consistently selected among the policy-price scenarios.

In this way, PacifiCorp uses PLEXOS to optimize its selection of bid resources to identify the lowest cost, reliable portfolio under multiple scenarios for further consideration as part of the final shortlist process. PacifiCorp may select one or more 2025 OR Situs RFP resource portfolios for further scenario risk analysis.

PacifiCorp uses PLEXOS to test each portfolio and evaluate its ability to perform under dynamic weather and market conditions. PLEXOS measures the stochastic risk of each portfolio through its production cost estimates. By holding a resource portfolio fixed and using simulations of stochastic variables, including load, wholesale electricity and natural gas prices, hydro generation, wind generation, solar generation, and thermal unit outages, PLEXOS can measure the expected cost of each portfolio in an uncertain future.

iv. Price Scoring

PLEXOS will calculate the relative costs and benefits of each resource included in the model for evaluation. The operational characteristics of every bid will be included in the model so that PLEXOS will generate a value stream specific to each bid that will then be used to calculate a price score in accordance with **Appendix R - Bid Scoring and Modeling**.

<sup>14</sup> Consistent with the reserve requirements in the 2025 IRP.

<sup>15</sup> Policy-price scenarios will be conceptually consistent with those used in the 2025 IRP (i.e., alternative environmental policy assumptions among low, medium, and high price scenarios), but updated to reflect PacifiCorp's assessment of the most current information in consultation with the IE.

More information about bid modeling techniques and price scoring, including an example of how the bid scoring will work, may be found in **Appendix R – Bid Scoring and Modeling**.

#### E. FINAL SCORING AND RANKING TO RECOMMENDED FINAL SHORTLIST

Following the PLEXOS analysis to select resources and determine price scores for each of the bids, PacifiCorp will combine the price and non-price scores to generate a total final bid score and ranking for each bid. When calculating scores associated for any bids located in PacifiCorp's PACE balancing area, the capacity contribution for PacifiCorp's PACW balancing area will be reduced to zero, in consultation with the independent evaluator and OPUC Staff, and in accordance with the forthcoming capacity scoring proposal, once the capacity requirements have reached the transmission limit in the peak summer season. Furthermore, as part of the selection of a final shortlist, (a) PacifiCorp will evaluate House Bill 2021 compliance if implications arise from increases of unspecified market purchases that might occur when more PACE-sited resources produce generation that exceeds the available transmission from PACE to PACW, and (b) modeling will assess whether resource supply in or deliverable to PACW are sufficient in supporting PacifiCorp's balancing requirements as part of its California ISO Extended Day-Ahead Market (EDAM) participation.

If the ranked bids are inconsistent with the selected resources and preferred portfolio resulting from the PLEXOS performance optimization models, in coordination with the IE, PacifiCorp will investigate the discrepancy(ies) and may add or remove resources and run additional iterations of PLEXOS including, but not limited to, reliability tests and price-policy scenarios.

PacifiCorp will hold regular meetings with the IE both in the preparation process for preparing model inputs and analyses and after proposals are received during the evaluation and selection process. Before establishing a final shortlist, the IE will be provided with all bid preparation files and all of the PLEXOS outputs in order to evaluate the scoring and selection process. PacifiCorp may take into consideration, in consultation with the IE, other factors that are not expressly or adequately factored into the evaluation process outlined above, particularly any factor required by applicable law or Commission order to be considered.<sup>16</sup>

PacifiCorp will summarize and evaluate the results of its scenario risk analysis, considering PVRR results, to identify the specific least-cost, least-risk bids in combination with non-price scores. Based on these data and certain other factors as described above, and in consultation with the IE, PacifiCorp may establish a final shortlist.

After the final shortlist is established, PacifiCorp will engage with the selected bidders to initiate negotiation of their contract and prepare the contract for execution. Selection of a bid to the final shortlist does not constitute a winning bid. Only execution of a definitive

<sup>16</sup> OAR 860-089-0400.

agreement between PacifiCorp and the bidder, on terms acceptable to PacifiCorp, in its sole and absolute discretion, will constitute a winning bid proposal.

Pursuant to Oregon Public Utility Commission order 25-343 in docket no. UM 2383, PacifiCorp acknowledges that capacity is to be scored system wide. A system wide scoring methodology is still being developed and will be supplemented after further coordination with Oregon Public Utility Staff and the Independent Evaluator.

In accordance with the Oregon Public Utility Commission's order no. 25-343 in docket No UM 2383, before the shortlist is finalized for PacifiCorp's Washington RFP, PacifiCorp will confer with the IE to determine and discuss any on-ramps to allow for Oregon to potentially participate in resources shortlisted for Washington that were also bid into the Oregon RFP.

## SECTION 7. AWARDING OF CONTRACTS

### A. INVITATION

This RFP presents only an opportunity for bidders to make proposals to PacifiCorp. No proposal is itself a binding contract except to the extent the parties execute a definitive agreement with complete documentation providing otherwise.

PacifiCorp may in its sole discretion do any one or more of the following:

1. Determine which proposals are eligible for consideration in response to this RFP.
2. Issue additional subsequent solicitations for information and conduct investigations with respect to the qualifications of each bidder.
3. Supplement, amend, or otherwise modify this RFP, or cancel this RFP with or without the substitution of another RFP.
4. Negotiate with bidders to amend any proposal.
5. Select and enter into agreements with the bidders who, in PacifiCorp's sole judgment, submit proposals that best satisfy the interests of PacifiCorp and its customers. In exercising its sole judgment, PacifiCorp may consider factors other than price.
6. Waive any irregularity or informality on any proposal to the extent not prohibited by law.
7. Reject any or all proposals in whole or in part at any point in time, including proposals that are on the shortlist.
8. Vary any timetable.
9. Conduct any briefing session or further RFP process on any terms and conditions.
10. Withdraw any invitation to submit a response.

#### B. BASIS OF REJECTION

Proposals may be rejected for any reason including but not limited to not meeting the minimum eligibility requirements identified in Section 3.G Minimum Eligibility Requirements for Bidders of this RFP.

#### C. NON-RELIANCE LETTER

All parties will be required to sign **Appendix G-2 – Non-Reliance Letter** if they qualify for the final shortlist.

#### D. POST-BID NEGOTIATION

PacifiCorp will seek to enter into a final agreement with each bidder on the final shortlist. PacifiCorp will include in its final evaluation prior to contract execution any factor that may impact the total cost of a facility and associated risks, including but not limited to all the factors used in the final shortlist cost analysis plus consideration of the terms of the final agreement and accounting treatment and potential effects due to rating agency treatment, if applicable.

## SECTION 8. SECOND PHASE OF RFP

In accordance with the Oregon Public Utility Commission's order 25-343 in docket no. UM 2383, PacifiCorp will issue to market a second phase of this RFP, anticipated in 2026, which would occur after the conclusion, and contracts are executed, for the first phase of this RFP. Order No. 25-343 provides clarification that "a second phase of the RFP [should be] timed to take advantage of additional clarity on the connection between Longhorn substation and PACW, or any other way PacifiCorp connects the Boardman to Hemingway transmission project to PACW."

A second phase will comply with order 25-343, by allowing on system bidders that obtain a completed Facilities Study or Generator Interconnection Agreement, and by allowing off system bidders that may be able to progress through the interconnection and transmission service request process with a third party utility. The intent of the second phase is to provide a known entry for potential bidders that are currently in an existing PacifiCorp Cluster Study, and projects that seek to interconnect and deliver over a third party utility, contingent on a transmission project or study that will allow delivery to PacifiCorp West, including the Boardman to Hemingway transmission project.

When PacifiCorp is prepared to issue a second phase of the RFP, PacifiCorp will provide notice via the PacifiCorp website and email notification list. To be added to the notification distribution list, email [2025ORSitusRFP@pacificorp.com](mailto:2025ORSitusRFP@pacificorp.com). Furthermore, PacifiCorp will provide notice to the Oregon Public Utility Commission by making a filing in UM 2383 following the current request for proposals, or as soon as PacifiCorp is aware of opportunities for additional interconnection and transmission service. PacifiCorp's

understanding is that it would need to seek approval of the second phase of the RFP prior to market issuance, by the Oregon Public Utilities Commission, pursuant to per OAR Chapter 860-089.

**PACIFICORP HAS NO OBLIGATION TO ENTER INTO ANY AGREEMENT WITH ANY BIDDER TO THIS RFP AND PACIFICORP MAY TERMINATE OR MODIFY THIS RFP AT ANY TIME WITHOUT LIABILITY OR OBLIGATION TO ANY BIDDER. IN ADDITION, THIS RFP DOES NOT IN ANY WAY PREVENT PACIFICORP FROM ENTERING INTO ANY AGREEMENT THAT PACIFICORP DEEMS PRUDENT, IN PACIFICORP'S SOLE DISCRETION, AT ANY TIME BEFORE, DURING, OR AFTER THIS RFP PROCESS IS COMPLETE. FINALLY, PACIFICORP RESERVES THE RIGHT TO NEGOTIATE ONLY WITH THOSE ENTITIES THAT PROPOSE TRANSACTIONS THAT PACIFICORP BELIEVES IN ITS SOLE DISCRETION HAVE A REASONABLE LIKELIHOOD OF BEING EXECUTED.**







**Marion County**  
OREGON

## **ADMINISTRATIVE REVIEW** **APPLICATION**

**Applications will no longer be accepted by email or mail.  
All applications must be submitted in person.**

Marion County Planning Division  
5155 Silverton Rd. NE  
Salem OR 97305  
Phone: (503) 588-5038 – Email: [Planning@co.marion.or.us](mailto:Planning@co.marion.or.us)  
<https://www.co.marion.or.us/PW/Planning>

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### **PROCEDURE:**

- A. Once a complete application is received, the Planning Division will request comments from other County departments, other affected government agencies, and special districts.
- B. Planning staff will review the application for compliance with the County Comprehensive Plan, County Zoning Code, Statewide Planning Goals, and other applicable ordinances and regulations. The Planning Division will approve or conditionally approve the application if it clearly complies with all land use laws and regulations.
- C. Notice of the decision is sent to the applicant and property owners within the notification area. Please note there is a 15-day appeal period. The appeal process is explained in the Notice of Decision. If approved, the conditions of approval will be listed in the notice. Other findings of facts and conclusions will be included in the notice.

### **APPLICATION REQUIREMENTS:**

Do not double-side or spiral bind any documents being submitted as our office will be scanning this information.

Incomplete applications will not be accepted. A complete application consists of the following that must be submitted:

- A. The attached application form completed in ink or printed.
- B. Copy of the most recent officially recorded title transfer instrument (deed, warranty deed, or contract) that shows the legal description for the subject parcel(s). Available at the Clerk's Office, 2<sup>nd</sup> floor, 555 Court St. NE, Salem.
- C. Site Plan (see attached example). The site plan should be on a separate **8½ x 11 inch sheet of paper**, drawn or printed in ink, and show the location of the proposed use and its distance from other structures, property lines, roads and other features.
- D. A written statement which explains your reasons for the proposal and how your request conforms to Marion County land use policies and regulations. A copy of the pertinent regulations is available from the Planning Division.
- E. Filing fee: checks payable to Marion County, or payment by card.

**Please note:** Land development fees are charged by various offices within Marion County Public Works. Most development requests are reviewed by a number of these offices and there may be several fees you will incur during the development process.

If all the required information is not submitted with the application form, it will not be accepted. If the application is withdrawn after a file has been set up or fee deposited, the entire fee cannot be refunded. Partial refunds are at the discretion of the Planning Director based on the amount of staff work undertaken.

It is unlawful to disturb an archaeological site. In the event of unintentional discovery of an archeological site please stop work, protect the discovery site and contact the Oregon State Historic Preservation Office PH: 503-986-0690; Confederated Tribes of Grand Ronde PH: 503-879-5211; Confederated Tribes of Siletz Indians PH: 541-444-2532; Confederated Tribes of Warm Springs Reservation of Oregon PH: 541-553-3257. If human remains are encountered, do not disturb them in any way, instead please contact the Oregon State Police PH: 800-442-0776.



**Marion County**  
OREGON

# ADMINISTRATIVE REVIEW APPLICATION

**Do not double-side or spiral bind any documents being submitted.**

**Fee: Please check the appropriate box:**

- Administrative Review - \$770
- Primary Farm Dwelling - \$1000
- Secondary Farm Dwelling - \$1250
- Replacement Dwelling - \$450
- Lot of Record - \$1250 (staff); \$1990 (hearing)
- Forest Dwelling - \$1250

<b>PROPERTY OWNER(S):</b> Neils Paul Jensen, Trustee of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust	<b>ADDRESS, CITY, STATE, AND ZIP:</b> PO Box 299, Jefferson, OR 97352
<b>PROPERTY OWNER(S) (if more than one):</b> Neils Paul Jensen, Trustee of the Irma Jensen Irrevocable Trust	<b>ADDRESS, CITY, STATE, AND ZIP:</b> same
<b>APPLICANT REPRESENTATIVE:</b> Alexandra Thompson, Manager, Remington BESS, LLC	<b>ADDRESS, CITY, STATE, ZIP:</b> 1999 Harrison Street, Suite 2720 Oakland, CA 94612
<b>DAYTIME PHONE (if staff has questions about this application):</b> 510-514-1535	<b>E-MAIL (if any):</b> alexandra.thompson@rwe.com
<b>ADDRESS OF SUBJECT PROPERTY:</b> Tax Lot 092W20D000100, Pearson Rd SE, 500 ft east of Parrish Gap Road	<b>SIZE OF SUBJECT PROPERTY:</b> 46.35 ac, of which ~15ac to be developed

**THE PROPERTY OWNERS OF THE SUBJECT PROPERTY REQUEST TO** (summarize here; provide detailed information on the attached "Applicant Statement" page):

Lease a ~15-acre portion of the property to Remington BESS, LLC, which will construct and operate a 199-megawatt utility battery storage facility including access road, on-site substation, stormwater control, electrical connection to neighboring Parrish Gap Substation, and ancillary facilities. See Applicant Statement for details.

**WILL A RAILROAD HIGHWAY CROSSING PROVIDE THE ONLY ACCESS TO THE SUBJECT PROPERTY?**  
 ( ) YES (X) NO IF YES, WHICH RAILROAD:

**FOR OFFICE USE ONLY:**

Township	Range	Section	Application elements submitted:
Tax lot number(s)			<input type="checkbox"/> Title transfer instrument
Zone:			<input type="checkbox"/> Site plan
Zone map number:			<input type="checkbox"/> Applicant statement
			<input type="checkbox"/> GeoHazard Peer Review (if applicable)
Case Number:			<input type="checkbox"/> Filing fee
<input type="checkbox"/> Urban <input type="checkbox"/> Rural			Application accepted by: _____ Set up by: _____
Date determined complete:			Date: _____

**THE APPLICANT(S) SHALL CERTIFY THAT:**

- A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.
- D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

**PRINTED NAME AND SIGNATURE** of each owner of the subject property.

Neils Jensen AS Trustee of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust  
 \_\_\_\_\_  
 Print Name Signature

DocuSigned by:  
 Neils Jensen  
 B6320FC9DC11458...  
 Signature

Neils Jensen AS Trustee of the Irma Jensen Irrevocable Trust  
 \_\_\_\_\_  
 Print Name Signature

DocuSigned by:  
 Neils Jensen  
 B6320FC9DC11458...  
 Signature

\_\_\_\_\_  
 Print Name Signature

\_\_\_\_\_  
 Print Name Signature

DATED this \_\_\_\_\_ day of 6/25/2025, 20 \_\_\_\_\_





**INSTRUCTIONS FOR PREPARATION OF A SITE PLAN**

Site plan must be **current**, drawn to scale, and **show all property lines**. If unable to draw to scale, property lines must still be shown noting actual dimensions or total acreage.

**Failure to include all of the items listed below may delay the review necessary to obtain a permit**

**ITEMS THAT MUST BE SHOWN ON YOUR SITE PLAN:**

- 1. **NORTH ARROW.**
- 2. **SCALE OF DRAWING.**
- 3. **STREET NAME** accessing the parcel.
- 4. **ALL PROPERTY LINES AND DIMENSIONS** – existing and proposed.
- 5. **DRIVEWAYS, ROADS, INTERNAL ROADS, PARKING AND CIRCULATION AREAS** – existing and proposed and label as “Paved” or “Gravel.” Show driveway to public right-of-way.
- 6. **EXISTING AND PROPOSED STRUCTURES** - label as “Proposed” and “Existing”. Include dimensions and distance to all property lines and other structures.
- 7. **UTILITY LINES AND EASEMENTS.**
- 8. **GEOGRAPHIC FEATURES** – ground slope and direction of slope, escarpments, streams, ponds, or other drainage ways.
- 9. **WELLS** – existing and proposed on this parcel and adjacent parcels within 100 feet.
- 10. **FENCES, RETAINING WALLS** – location of existing and/or proposed.
- 11. **PARTITIONING** (if applicable) – proposed new property line shown by dashed lines, with parcels labeled as “Parcel 1”, “Parcel 2”, etc.
- 12. **SEPTIC SYSTEM and REPLACEMENT AREA** – existing and proposed. Show existing septic tank, drain field lines and distance from structure(s).
- 13. **STORM WATER SYSTEMS OR DETENTION BASINS** – show existing and proposed.
- 14. **CUTS/FILLS** – show existing and proposed.
- 15. **ELEVATIONS** – at lot corners or construction area and at corners of building site.
- 16. **FLOODPLAIN** – if applicable, show the boundary of the 100 year floodplain.

**If sanitary sewer service is not available, a septic system must be installed.** Include the following additional items on the site plan:

- 17. **TEST HOLES** – show distances between holes and property lines. One test hole should be located in the center of the initial system installation site, the other in the center of the replacement area. Accuracy of location is very important.
- 18. **PROPOSED SEPTIC SYSTEM AND REPLACEMENT SYSTEM** – show septic tank and distance from structure; show disposal trenches and length, width, and distance between trenches.

**Commercial development must also include the following:**

- 19. **FIRE DEPARTMENT ACCESS**
- 20. **FIRE HYDRANTS** – locations
- 21. **HANDICAP ACCESS**
- 22. **LANDSCAPING** – existing and proposed landscaping areas.
- 23. **PARKING** – lot configuration, number of parking spaces, and off-street loading area.

**Additional information such as patio slabs, walkways, roof overhangs, etc. may be required for the issuance of your permit.**

**YOU MAY USE THE REVERSE SIDE OF THIS FORM TO DRAW YOUR SITE PLAN**

Property Owner(s) Name: Neils Paul Jensen, Trustee of the Neils Paul Jensen and Irma L. Jensen JRT and Irma Jensen IT Phone: 503-932-0012

Site Address: Unaddressed (Pearson Road SE at Parrish Gap Road SE) City: Turner Zip 97392

Subdivision: n/a Lot: 092W20D000100 Block: 5200

Manufactured Home Park: n/a Space: n/a

Assessor Map # (T-R-Sec-TL(s)): 09S-2W-20D-SE 1/4 Total # Acres 46.35

Zoning Designation: Exclusive Farm Use (EFU) Planning Map Exclusive Farm Use (EFU)

Permit Specialist Review: \_\_\_\_\_ Date: \_\_\_\_\_

**SITE PLAN MUST SHOW ALL PROPERTY LINES AND DIMENSIONS**

Drawn to Scale: 1 square = \_\_\_\_\_ Feet Not Drawn to Scale: Total Acres \_\_\_\_\_

See attached site plan

I certify that the above information is accurate to the best of my knowledge. I AM THE [ ] Owner or [ ] Authorized Agent

NAME (please print): \_\_\_\_\_ Telephone# \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant's Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

**FOR OFFICE USE ONLY**

PLANNING: \_\_\_\_\_ Date: \_\_\_\_\_

PUBLIC WORKS: \_\_\_\_\_ Date: \_\_\_\_\_

BUILDING INSPECTION (Acceptable for Planning requirements only) \_\_\_\_\_ Date: \_\_\_\_\_





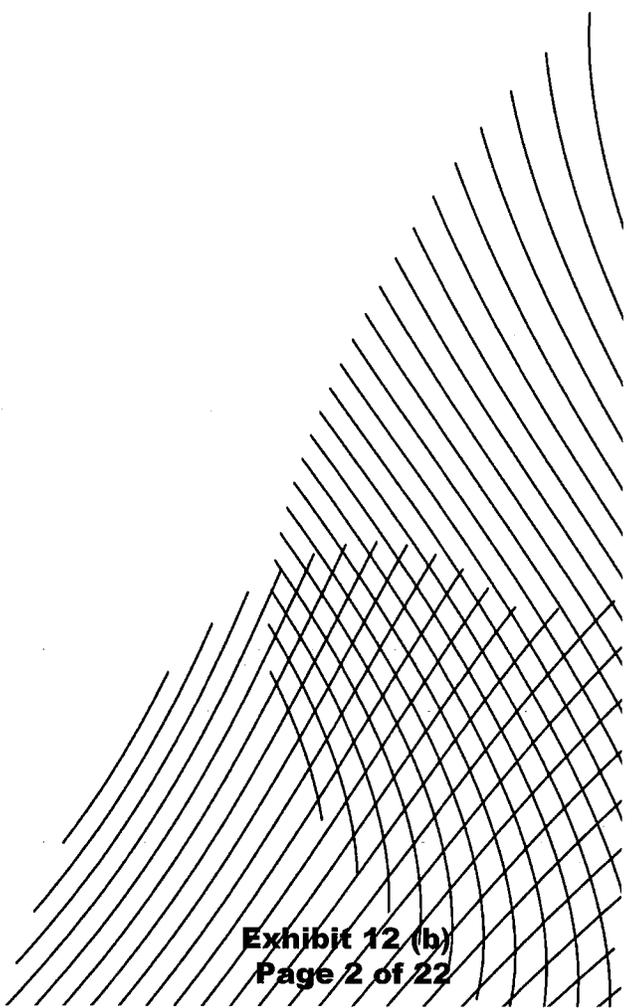
# Remington BESS

## Administrative Land Use Review Application

**Prepared for**  
Marion County Planning Department

**Prepared by**  
Remington BESS, LLC  
June 2025

**Applicant Statement  
Remington BESS**



# RWE

## Contents

1	Introduction.....	5
1.1	Compliance Summary .....	5
2	Details of Proposed Use.....	6
2.1	Purpose and Rationale .....	6
2.2	Project Description and Site Characteristics .....	7
2.3	Site Design and Construction Methods .....	8
2.3.1	BESS Design and Construction.....	8
2.3.2	Ancillary Facilities and Structures.....	9
2.3.3	Utility-Owned Point of Interconnection Substation .....	9
2.3.4	Site Access.....	10
2.3.5	Planned Operations .....	10
2.4	Safety .....	10
2.4.1	Fire Safety .....	11
2.4.2	Law Enforcement .....	12
2.5	Impact Control Measures for Sound, Odors, and Air Quality .....	12
2.5.1	Construction Phase.....	12
2.5.2	Operations Phase.....	12
2.6	Waste Management .....	13
2.7	Environmental.....	13
2.8	Decommissioning.....	13
2.9	Economic Impact and Community Benefits.....	14
3	Code Compliance.....	14
3.1	Marion County Code.....	14
3.1.1	Chapter 17.136.040(I) - Uses Permitted Subject to Standards .....	14
	Technical and Engineering Feasibility and Locational Dependence .....	15
	Lack of Available Urban and Non-Resource Lands .....	16
	Public Health and Safety .....	16
3.1.2	Chapter 17.136.040(I)(6) - Other Requirements of State and Federal Agencies 17	
3.2	Oregon Administrative Regulations .....	19
3.2.1	Uses Authorized on Agricultural Lands.....	19
3.2.2	Minimum Standards .....	20



# 1 Introduction

Remington BESS, LLC (“Applicant”) is filing this application for Administrative Review per Marion County Code of Ordinances (“the Code”) **Section 17.136.040(I)** for the proposed construction and operation of the Remington Battery Energy Storage System (BESS) (“Project”), to be situated on approximately 15 acres of private property, located approximately 8 miles southeast of Salem. The Project will consist of battery containers, transformers, inverters, transmission lines, access roads, fencing, and associated infrastructure. The Project will deliver electricity to the PacifiCorp transmission system via existing transmission infrastructure and associated utility easements. The Project will interconnect to the existing Parrish Gap Substation immediately to the south of the proposed Project area.

## 1.1 Compliance Summary

**Conforms to Marion County Land Use Regulations:** The proposed Project is best categorized per **Section 17.110.584** of the Code, as a “utility facility”. Utility facilities are allowed following Administrative Review within Exclusive Farm Use (EFU) Districts per **Section 17.136.040(I)** of the Code.

The Project requires siting within an EFU zone due to more than one of the possible factors listed Marion County Code Chapter 17.136.040(I), including **Technical and Engineering Feasibility, Locational Dependence, Lack of Available Urban and Nonresource Lands, and Public Health and Safety**, as described in detail in Section 3, Code Compliance.

The required findings have been made and this written narrative and accompanying documentation demonstrate that the application is consistent with the applicable written provisions of the Marion County Code. The evidence in the record is substantial and supports approval of the application. Therefore, the County can rely upon this information in its approval of the application.

# 2 Details of Proposed Use

## Key Project Information

<b>Type of Development</b>	The proposed development is for a utility facility, specifically described as a battery energy storage system (BESS). The BESS facility will have a total electrical output capacity of approximately 199 MW (AC) at the point of interconnection.
<b>Applicant</b>	Remington BESS, LLC 20 California Street, 5th Floor San Francisco, CA 94111
<b>Project Location</b>	Marion County, 8 miles southeast of Salem
<b>Property Owners</b>	Neils P. Jensen, Trustee of the Neils Paul Jensen and Irma L. Jensen Revocable Trust
<b>Tax Lot Number</b>	092W20D000100
<b>Project Area</b>	15 acres
<b>Zoning</b>	Exclusive Farm Use (EFU)
<b>Special Flood Hazard Area (SFHA)</b>	Zone X - Area of Minimal Flood Hazard
<b>Existing Use</b>	Agriculture

## 2.1 Purpose and Rationale

The Project would consist of a battery energy storage system (BESS) with a planned capacity of approximately 199 MW alternating current ("AC") at the point of interconnection (POI). The Project would include battery containers, transformers, inverters, transmission lines, and associated infrastructure. The Project will interconnect to the Pacificorp-owned electrical grid via the Parrish Gap Substation. The entire project will include a new Applicant-owned collector substation located on the real property included in this Application, and as further described in this Application.

Energy storage technologies continue to advance in terms of increased power output and efficiency. Modern equipment and facility design have resulted in significant reductions to the cost of energy storage systems. As such, a final selection of equipment and Project configuration is under evaluation and will be made during the final detailed engineering and financing process prior to the start of construction.

## 2.2 Project Description and Site Characteristics

The proposed Project site is located in Marion County, southeast of the city of Salem. **Figure 1** (below) is a map illustrating the location of the proposed Project area. Project facilities will occupy approximately 15 acres of the 46-acre parcel. Current Project design is preliminary and subject to further design and engineering. A preliminary Site Plan showing the Project site in greater detail is provided at the end of this Application.

The Project will interconnect to the transmission grid at the Pacificorp Parrish Gap Substation (the point of interconnection or "POI"), as noted above. Power from the project facilities would be collected at an Applicant-owned collector substation, located on site just adjacent to the POI. The energy would then be transmitted from the collector substation to the POI, and then into an existing Pacificorp- or PGE-owned line.

The Project area is primarily agricultural in nature, with rural residences to the south and west and actively farmed lands to the east, north, and west. Based on preliminary design, the Project facilities would be located on areas of gentle slopes where little to no earth moving would be required. The Applicant expects that all construction and operation-related activities (including staging and laydown areas, temporary construction parking, etc.) will take place within the Project boundaries and any rights-of-way and easements associated with the Project area.



**Figure 1. Proposed Project Area and Surrounding Area**

Final design and engineering of the Project will be completed prior to the start of construction. As part of the detailed engineering phase, a detailed site plan will be developed that will show precise locations for storage facilities, access roads, staging areas, and parking areas for construction activities. All depictions of facilities in this Application are preliminary and subject to further review.

The Project will comply with all applicable federal, state, local and industrial standards and regulations throughout development, construction, operation, and decommissioning. The Project facilities will be set back from all property lines and public road rights-of-way in accordance with the applicable Marion County standards.

The duration of the development period (i.e., prior to construction) will depend on the timing needs of the interconnection utility and affected transmission systems and on the Applicant's ability to contract offtake for up to 199 MWac of energy storage capacity. During this initial period, many pre-construction activities will occur, such as land surveys and geotechnical studies. Construction is expected to occur over 12 to 16 months. As of the submittal of this Application, the earliest potential commercial operation date ("COD") is mid-2027. To meet this schedule, construction would be expected to start as early as the second quarter of 2026. The overall Project schedule will be reviewed with the County as it is developed. A final detailed schedule of construction activities will be developed following achievement of critical milestones for the Project, including the approvals sought under this Administrative Land Use Review.

## **2.3 Site Design and Construction Methods**

This section describes the planned facilities and typical construction and operation methods for the Project. The Site Plan Map illustrates the Project area, anticipated arrangement of access roads, Project collector substation, and ancillary facilities.

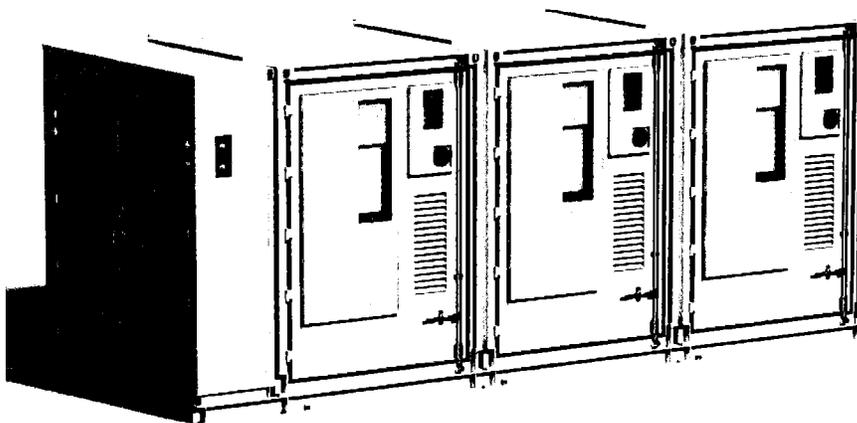
The included design is preliminary. Final details and specifications for Project design and associated subcontracts for services will be executed once key development permits and construction financing for the Project have been achieved. A final selection of construction service vendors has yet to be made. Applicable building permits will be obtained prior to any construction activity on site.

### **2.3.1 BESS Design and Construction**

Construction of the BESS facility will follow industry standard methods for BESS facilities. Construction activities would begin with a grading and vegetation management process to remove surface vegetation while minimizing dust generation. In some areas, grubbing and grading will be required to level particularly rough areas and to prepare soils for concrete foundations for Project equipment. Access roadbeds will also be grubbed, graded, and compacted. A fence line will surround the facility and will be grubbed and graded, where needed, to create a level surface for proper fence installation.

Construction of the electrical system will involve the installation of buried cables to connect Project equipment and collect and discharge electrical energy. These cable systems may be installed using trenching techniques, which typically include a rubber-tired backhoe excavator or trencher. Potential wire depths would be in accordance with local, State, and Federal requirements. After excavation, cable would be installed in the trench, and excavated soil would be used to fill the trench. The Project may use this methodology or a new hybrid method in which the electrical wiring is buried in select locations and hung above ground in others.

Following the cable installation, the battery enclosures would be placed on concrete foundations. Commissioning of the battery facility would include testing, calibration of equipment, and troubleshooting. The electrical equipment would be tested prior to commencement of commercial operations. Upon completion of successful testing, the equipment would be energized.



*Figure 2. Image depicting typical BESS similar to that proposed for the Project*

### **2.3.2 Ancillary Facilities and Structures**

The Project may include one or more control building(s) and collection substation(s), all located within the Project area. A control building would likely be a pre-engineered metal structure used to house a small battery system for back-up power, data collection, communications, and shut-down equipment. Sizes and flood plan layouts for these structures would be determined during detailed engineering efforts. Any structures would be designed and constructed in compliance with applicable codes.

### **2.3.3 Utility-Owned Point of Interconnection Substation**

The Project would require the installation of a new 230kV line position at the Pacificorp-owned Parrish Gap Substation, which will be owned and operated by the interconnecting utility. This would include the installation of new circuit breakers, switches, metering

equipment, and communications equipment within the existing footprint of the Parrish Gap Substation.

It is expected that the construction and operational materials required and provided for the interconnection facilities will be wholly owned and operated by the utility. As such, the POI substation will have a separate fence and the Applicant anticipates having limited to no access to the utility-owned facilities.

#### **2.3.4 Site Access**

Project construction will include multiple access points for trucks, construction vehicles, battery equipment, other Project materials, and fire department access. Planned access to the Project during both construction and operation is from Pearson Road SE via a new Project-specific access road. This will be confirmed following consultation with relevant county first responders. Existing access to the site from the south and east is being considered for secondary (emergency) access and egress. Operational use of the roads surrounding and leading to the Project is expected to be minimal because the Project site would not be staffed during operations. The Project access road would be designed and constructed in accordance with applicable state and local standards.

The Project would also include a perimeter road and interior equipment access roads, all within the Project fenceline. The perimeter road would be constructed to allow access by maintenance, fire, and security personnel. Knox-Box or similar rapid entry systems, or other approved substitutes, will be installed at locked entrances for emergency personnel access. Site access can be seen in the included site plan. Interior Project roads would be appropriately graded and compacted to mitigate fugitive dust and ensure safe internal circulation throughout the site. Additional access points will be developed in coordination with emergency services to provide adequate access to fire and safety personnel and equipment as needed. Final documentation of the access right-of-way will be completed prior to application for building permits and final design will comply with fire and safety regulations.

As part of detailed engineering and the construction permit process, a detailed site plan will be updated to indicate parking areas for construction activity. The Project will acquire all necessary approach and transportation permits required by federal, state, local, and industry regulations.

#### **2.3.5 Planned Operations**

The Project will be remotely monitored and operated, with personnel visiting the site periodically to perform inspections and maintenance. Once the Project is operational, the facilities will be capable of operating seven days per week.

## **2.4 Safety**

The Project and associated electrical equipment do not pose any serious public health or safety concerns. Much of the system operates at low voltage and power levels. Any higher-

voltage substation equipment will be contained in a fenced area with appropriate signage denoting the electrical nature of the facility. The proposed voltages and transmitted power are similar to or lower than the existing transmission lines traversing the immediate area. Detailed fire prevention and fire department notification policies and training will be created in coordination with the applicable AHJs, and personnel will be trained and required to follow these procedures.

The design, construction, operation, and maintenance of the facilities will meet the requirements of the National Electrical Safety Code (NESC) and the US Department of Labor Occupational Safety and Health Administration (OSHA) Standards, as well as requirements for the safety and protection of property owners and their property.

The Applicant and any associated contractor would provide a safe work environment at all times. This would include barricading/covering/flagging potentially hazardous structures associated with the Project. At the end of the day, all tools would be gathered, cached, and secured to prevent safety problems and vandalism.

During movement of large trucks to the work sites, appropriate road signs for public safety purposes such as "Caution Heavy Truck Traffic" or "Be Prepared to Stop" would be provided along the appropriate County roads.

Upon request of the jurisdiction's transportation authority, the Project will develop a Traffic Control Plan that will be implemented throughout the entirety of Project construction.

#### **2.4.1 Fire Safety**

Applicable fire safety standards will be reviewed in preparing an Emergency Response Plan (ERP) to minimize the occurrence of unwanted human-caused and naturally caused fires. The plan would describe an emergency notification procedure, site evacuation process, and fire prevention and suppression procedures. Fire extinguishers would be available at strategic locations throughout the Project. Access to and within the Project area will be designed to allow fire and rescue vehicles access.

Vegetation within the fenceline would be removed, and the perimeter road would provide a minimum 20-foot separation between the electrified equipment and adjacent agricultural uses. Therefore, the risk of wildfire is expected to be relatively low. The energy storage equipment is designed to be resistant to fire and are constructed of non-combustible steel and aluminum. All electrical equipment would meet applicable Underwriters Laboratories (UL) and International Electrotechnical Commission (IEC) ratings for their resistance to fire.

Any BESS would follow safety guidelines from the National Fire Protection Association (NFPA). The storage system will have seismic protection features to mitigate risks associated with earthquakes as well as an independent smoke and fire detection and suppression system. Battery facilities will be properly identified with signs and an emergency operations plan will be developed prior to installation. Adequate access for emergency equipment will be included in Project design.

#### **2.4.2 Law Enforcement**

The Project will be within the jurisdiction of the Marion County Sheriff's Office. The Project is not expected to affect law enforcement operations, nor impact its ability to provide adequate law enforcement services to the surrounding community. No adverse impacts are anticipated, and no mitigation is proposed.

## **2.5 Impact Control Measures for Sound, Odors, and Air Quality**

#### **2.5.1 Construction Phase**

Construction activities will generate noise within and adjacent to the project site. All contractors will conduct construction activities in compliance with applicable noise regulations that limit construction to daytime hours and specific maximum levels. The anticipated construction activity will include site preparation with typical civil equipment, delivery of equipment on trucks, construction crew trucks, crane operations to set modules on concrete pads, bucket truck operations for interconnection work, and personnel vehicles.

Air quality may be affected by the generation of fugitive dust, construction equipment emissions, and worker vehicle emissions. Dust will be controlled by watering and/or stabilizing of construction access roads and other soil management measures. Vehicular traffic routes will be centralized on-site, and equipment will be maintained in proper working order to minimize emissions.

#### **2.5.2 Operations Phase**

Remington BESS will not generate noise that exceeds the acceptable noise levels identified in County Ordinance #1273. The relevant noise levels are 55 dBA, when measured from a neighboring property line or dwelling at any time from 10PM to 7AM and 65 dBA, when measured from a neighboring property line or dwelling at any time from 7AM to 10PM. While some electrical equipment may emit a low humming during operation, the Project is not expected to adversely impact neighboring lands or other noise sensitive areas, due to the nature of the equipment and the distance between components and neighboring residences. The closest residence to the Project is over 450 feet from the proposed Project fenceline, and farther still from the equipment within the fenceline. At this distance, noise from the facility would attenuate to well below applicable noise levels.

Operations at the Project site will not adversely affect air quality. BESS projects generate little to no emissions. No odors will be generated directly from Project operation. No adverse impacts associated with air quality, dust, and odors are anticipated to occur during Project operation.

## 2.6 Waste Management

Construction wastes would be managed in accordance with applicable state and local regulations. Trash and food items would be placed in closed containers with lids and removed from the site regularly. Fuel, oil, and hydraulic fluids used in construction and maintenance vehicles and equipment would be transferred directly from a service truck to construction equipment and would not otherwise be stored on site. Service personnel and construction contractors would follow standards operating procedures for filling and servicing construction equipment and vehicles to reduce the potential for spill incidents. Industry best management practices ("BMPs"), including spill prevention and containment measures, would be used to prevent spills. However, if spills do occur, they would be cleaned up completely, quickly, and safely and reported to authorities as necessary.

During construction, shipping pallets and cardboard will make up most of the wastes produced. The Project expects to utilize local recycling services and, as needed, a local landfill to the greatest extent possible to dispose of Project-related waste.

## 2.7 Environmental

Initial assessment of the Project area has indicated that it is suitable for the Project. The Applicant will retain the support of a leading provider of environmental surveys to conduct environmental impact assessments, including biological and cultural surveys. The lands associated with the Project will be further evaluated prior to the start of construction.

The Applicant is committed to environmentally responsible development and has a long history of developing, owning, and operating safe, responsible energy projects.

A Stormwater Pollution Prevention Plan compliant with the applicable National Pollutant Discharge Elimination System (NPDES) permit would be prepared and implemented during construction. Contractor personnel would be properly trained to control and clean up any spills and manage other mitigation efforts. Post-construction and operation phase environmental monitoring and mitigation plans, if required, will be determined once all development phase studies have been completed and once a final selection of construction services has been made.

## 2.8 Decommissioning

The Project would have a usable lifespan after which continued operation would not be cost-effective. This is expected to occur after approximately 25 years of operation. At that time, the Project would either be decommissioned, and all equipment would be removed, or new technology would be proposed for installation. Typical battery energy storage systems have a usable lifetime of 20-25 years, subject to how they are used and maintained, after which the cell modules may need to be replaced to maintain the necessary minimum capacity rating. To avoid this, the Applicant would likely perform periodic augmentations of battery components. This process involves routinely replacing certain elements of the BESS

that have degraded, rather than overhauling the entire system. Recycling of BESS components has become a rapidly growing, robust industry and Project BESS components would be sent to a recycling facility upon being replaced.

A final decommissioning and site reclamation plan would be developed consistent with County policy and objectives at that time, as approved by the County. The design features and stipulations that have been developed for construction activities would be applied to similar activities during decommissioning, as necessary.

## **2.9 Economic Impact and Community Benefits**

In total, it is anticipated that approximately 150 full-time equivalent (“FTE”) construction jobs would be created during the peak construction phase of the Project. The construction work is expected to take approximately 12 to 24 months to complete, with the number of construction workers physically on site changing over time. A significant number of qualified workers will be sourced from local communities in the area to the extent possible. Construction-phase jobs will include qualified engineers, surveyors, electricians, general contractors, project managers, and general laborers meeting the applicable industry requirements for utility-scale energy projects.

# **3 Code Compliance**

## **3.1 Marion County Code**

### **3.1.1 Chapter 17.136.040(I) – Uses Permitted Subject to Standards**

#### **17.136.040 Uses Permitted Subject to Standards**

The following uses may be permitted in the EFU zone subject to approval of the request by the director, based on satisfaction of the standards and the criteria specified for each use, pursuant to the procedures in Chapter 17.115 of the MCC.

- 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;
  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;
  3. Lack of available urban and nonresource lands;
  4. Availability of existing right-of-way;
  5. Public health and safety; and

6. Other requirements of state and federal agencies. (...)

**Response**

Per MCC 17.110.584, a “utility facility” means “any water, gas, sanitary sewer, storm sewer, electricity...and related physical facilities which do not include buildings regularly occupied by employees, parking areas, or vehicle, equipment and material storage areas, wireless communications facility or wireless communications facility, attached.” The planned Project does not include buildings regularly occupied by employees, parking areas, or any other listed exceptions and is therefore a “utility facility” permitted within the EFU zone. This determination has been confirmed by the County previously in a meeting between County planning personnel and a representative of Remington BESS, LLC in February 2025.

The Project requires siting within an EFU zone due to more than one of the possible factors listed Marion County Code Chapter 17.136.040(l), including **Technical and Engineering Feasibility, Locational Dependence, Lack of Available Urban and Nonresource Lands, and Public Health and Safety**, as described in detail below.

Additionally, the Project will not commit any property outside the Urban Growth Boundary (UGB) to urban development now or in the future.

The Project does not require use of the entire parcel for the Project. Therefore, the traditional agriculture use occurring on the remaining portion of the parcel (currently, fescue grass seed production for lawn turf) will be unaffected by the Project. Thus, the parcel will continue to conform to the goals of the EFU zone. The Project is also not expected to impact the agricultural use of neighboring parcels to the west, north, and east.

**These requirements are satisfied, and the utility facility is a permitted use within the EFU zone consistent with Marion County Code and state statutes addressed later within this narrative.**

Technical and Engineering Feasibility and Locational Dependence

**17.136.040(l)(1) Technical and Engineering Feasibility**

**17.136.040(l)(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.

**Response**

Battery energy storage systems must be sited as close as possible to transmission resources (i.e., substations and associated transmission lines) that have available capacity to interconnect. Through coordination with regional grid operator PacifiCorp, the Applicant has determined that the PacifiCorp-owned Parrish Gap Substation has available capacity to interconnect and would require the fewest additional network upgrades (i.e., additional construction to expand and upgrade the substation) when compared to other substations

in the service area. Alternative sites farther from this substation would not meet the technical and engineering feasibility criterion because they would require prohibitive network upgrades, be sited near substations without available capacity, and/or require long transmission lines that would be costly to build, result in electricity losses during transmission, and draw opposition from residents and landowners in proximity to the necessary overhead lines.

The Parrish Gap Substation is surrounded by EFU zoning and by the typical allowed uses within this zone. Three parcels border the substation on the north side of Pearson Road SE. Of these, two (northern and eastern sides) are owned by the same landowner and are in similar agricultural use, and are of sufficient size to accommodate the Project without changing the overall character and use of the parcel. Two existing high-voltage transmission lines (owned by Pacificorp and Portland General Electric) separate the parcels along their shared property line. The proposed location of the Project directly adjacent to the existing substation eliminates the need for an overhead gen-tie transmission line that would need to cross other properties or County roads. It also eliminates the need to cross the two high-voltage lines in order to access the substation; crossing these lines and their associated easements with a Project transmission line would significantly increase the technical and engineering difficulties of the Project.

Several alternative parcels near the Parrish Gap Substation were studied, but for the reasons described above regarding the need for overhead transmission lines, were found to be less favorable with regard to technical and engineering feasibility and location.

Therefore, in order for the Project to be developed, it is necessary to locate facilities on this specific parcel adjacent to the Parrish Gap Substation. **This criterion is met.**

#### Lack of Available Urban and Non-Resource Lands

17.136.040(1)(3) Lack of available urban and nonresource lands.

##### **Response**

As described in the section above regarding feasibility and locational dependence, the Parrish Gap Substation is surrounded by lands zoned EFU. There is no available urban or non-resource land in proximity to the Parrish Gap Substation. Therefore, **this criterion is met.**

#### Public Health and Safety

17.136.040(1)(5) Public health and safety.

##### **Response**

The Project is not expected to impact the health and safety of the public. The Project itself has been sited to be substantially set back from any public rights-of-way and neighboring parcels. Additionally, the Project has been designed to avoid impacts to habitat and to wetlands and waterways, and to minimize the impact on agricultural soils.

Once operational, the Project will not result in any discharge or emissions to the environment. Emergency procedures will be developed and implemented following consultation and training with the relevant local agencies. These procedures, as well as design and engineering controls (setbacks, remote monitoring equipment, fire suppression systems), are expected to mitigate any potential impacts to the public in the event of a fire at the facility.

Due to the expected lack of impacts to the public during the construction and operation of the Project, **this criterion is met.**

### **3.1.2 Chapter 17.136.040(I)(6) - Other Requirements of State and Federal Agencies**

#### **17.136.040(I)(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.

#### **Response**

The costs associated with this Project were one factor among the many considered when selecting an appropriate site for the Project. The selected site allows for the entirety of the Project to be located on one parcel and minimizes the length of the Project's interconnecting transmission line. Additional land acquisition and/or transmission line easement negotiations, in addition to the increased costs for engineering and construction on parcels near the proposed Project site, make the proposed Project site the most viable option from a financial perspective. Nonetheless, as described in the previous section, cost alone is not the only reason for determining that the Project must be sited within EFU. **This requirement is met.**

- b) The owner of a 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 on a contractor the responsibility for restoration.

#### **Response**

While up to 15 acres of agricultural land will be temporarily removed from production to allow for the Project, following completion of the Project's lifespan, the Applicant will return the Project area to its traditional conditions by removing and properly recycling or disposing of the equipment offsite. The decommissioning and reclamation of the site will follow a Project Decommissioning Plan that will be developed and implemented prior to the start of construction in coordination with County departments and applicable authorities.

**This requirement is met.**

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

17.136.060

Conditional use review criteria.

- A The following criteria apply to all conditional uses in the EFU zone:
- 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.
  - 2 Adequate fire protection and other rural services are, or will be, available when the use is established.
  - 3 The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air, and water quality.
  - 4 Any noise associated with the use will not have a significant adverse impact on nearby land uses.
  - 5 The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

**Response**

The Project satisfies the conditions of **MCC 17.136.060(A)** as follows:

1. The Project will not result in any discharges or emissions to the environment. The Project is not expected to impact any of the surrounding properties and thus, will not result in a change or increase in the cost of accepted farm or forest practices on surrounding lands.
2. Prior to construction, the Project will consult with relevant first responders to ensure that there are suitable procedures in place in the event of a fire or other emergency. Preparation could include trainings, demonstrations, or other activities necessary to adequately prepare first responders to address an emergency at the Project site. Additionally, the Project will be equipped with emergency monitoring and response equipment that will minimize the manpower necessary to address emergencies.
3. As stated previously, the Project is not expected to result in any significant impacts to the environment due to the lack of emissions or other discharges to the environment. Additionally, the topography of the Project site is largely flat, so any grading and soil disturbance at the site is expected to be minimal.
4. While the electrical infrastructure associated with the Project will generate some level of noise, all noise-generating equipment will be designed to prevent a significant volume of noise from reaching neighboring parcels and other sensitive receptors. Noise can be mitigated through a variety of measures including setbacks, noise barriers, vegetative screening, and sourcing less noisy equipment. If there are significant noise concerns, the Project will conduct acoustic simulations to ensure the lack of impact on surrounding properties prior to construction.
5. The Project will not have any adverse impact on potential water impoundments or mineral and aggregate sites within the Comprehensive Plan.

- 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.

**Response**

This requirement is **not applicable to the Project** as it does not include a sewer extension.

- 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.

**Response**

This requirement is **not applicable to the Project** as it does not include a pipeline component.

- 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.

**Response**

This requirement is **not applicable to the Project** as it does not include a transmission line, with the exception of the gen-tie connecting the Project to the Parrish Gap Substation, which is less than about 300 feet in length, located fully within the Project parcel, and would affect only the farmland within this parcel that is being leased by the owner for development of the Project. For the same reasons, Chapter 17.136.040(I)(7)(B) Transmission Line Necessity is not applicable to the Project.

## 3.2 Oregon Administrative Regulations

### 3.2.1 Uses Authorized on Agricultural Lands

#### 660-033-0120 Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions, and exceptions set forth in this division. The abbreviations used within the table shall have the following meanings:

- 1 "A" Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130 and 660-033-0135. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.
- 2 "R" Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

- 3 "\*" — The use is not allowed.
- 4 "#" — Numerical references for specific uses shown in the table refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use in the table, this rule does not establish criteria for the use.

HV Farmland	All Other	Uses
R, 16(a) or (b)	R, 16(a) or (b)	Utility facilities necessary for public service, including associated transmission liens as defined in ORS 469.300 and 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 high.

**Response**

"R, 16(a) or (b)" refers to the fact that review is required, per Section 16(a) and (b). The planned utility does not generate power for public use or sale and does not require transmission lines in excess of 200 feet in height. Section 16(a) and (b) of OAR 660-033-0130, as prescribed by OAR 660-033-0120 are addressed below.

**3.2.2 Minimum Standards**

**660-033-0130 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses**

- (16)(a) A utility facility established under ORS 215.213(1)(c) or 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:
- (A) Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
    - (i) Technical and engineering feasibility;
    - (ii) 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;
    - (iii) Lack of available urban and nonresource lands;
    - (iv) Availability of existing rights of way;
    - (v) Public health and safety; and
    - (vi) Other requirements of state and federal agencies.
  - (B) Costs associated with any of the factors listed in paragraph (A) of this subsection 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.
  - (C) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition 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 paragraph shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
  - (D) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, 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 surrounding farmlands.
- (E) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.
  - (F) In addition to the provisions of paragraphs (A) to (D) of this subsection, 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.
  - (G) The provisions of paragraphs (A) to (D) 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.

### **Response**

The Marion County Code implements the listed requirements of OAR 160-033-0130(16). These responses are listed above in Section 3.1, Marion County Code. Those requirements include clear and objective standards mitigating and minimizing impacts from a planned utility facility on surrounding farm and forest lands. **This criterion is met.**

- (16)(b) An associated transmission line is necessary for public service and shall be approved by the governing body of a county or its designee if an applicant for approval under ORS 215.213(1)(c) or 215.283(1)(c) demonstrates to the governing body of a county or its designee that the associated transmission line meets either the requirements of paragraph (A) of this subsection or the requirements of paragraph (B) of this subsection.
  - (A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:
    - (i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;
    - (ii) The associated transmission line is co-located with an existing transmission line;
    - (iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or
    - (iv) 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.
  - (B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:
    - (i) Technical and engineering feasibility;
    - (ii) 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;
    - (iii) 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;
    - (iv) Public health and safety; or
    - (v) Other requirements of state or federal agencies.
  - (C) As pertains to paragraph (B), 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
- (D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

**Response**

The Marion County Code implements the listed requirements of OAR 160-033-0130(16). These responses are listed above. Those requirements include clear and objective standards mitigating and minimizing impacts from a planned utility facility on surrounding farm and forest lands. **This criterion is met.**

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 nursey 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 nonresource 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.

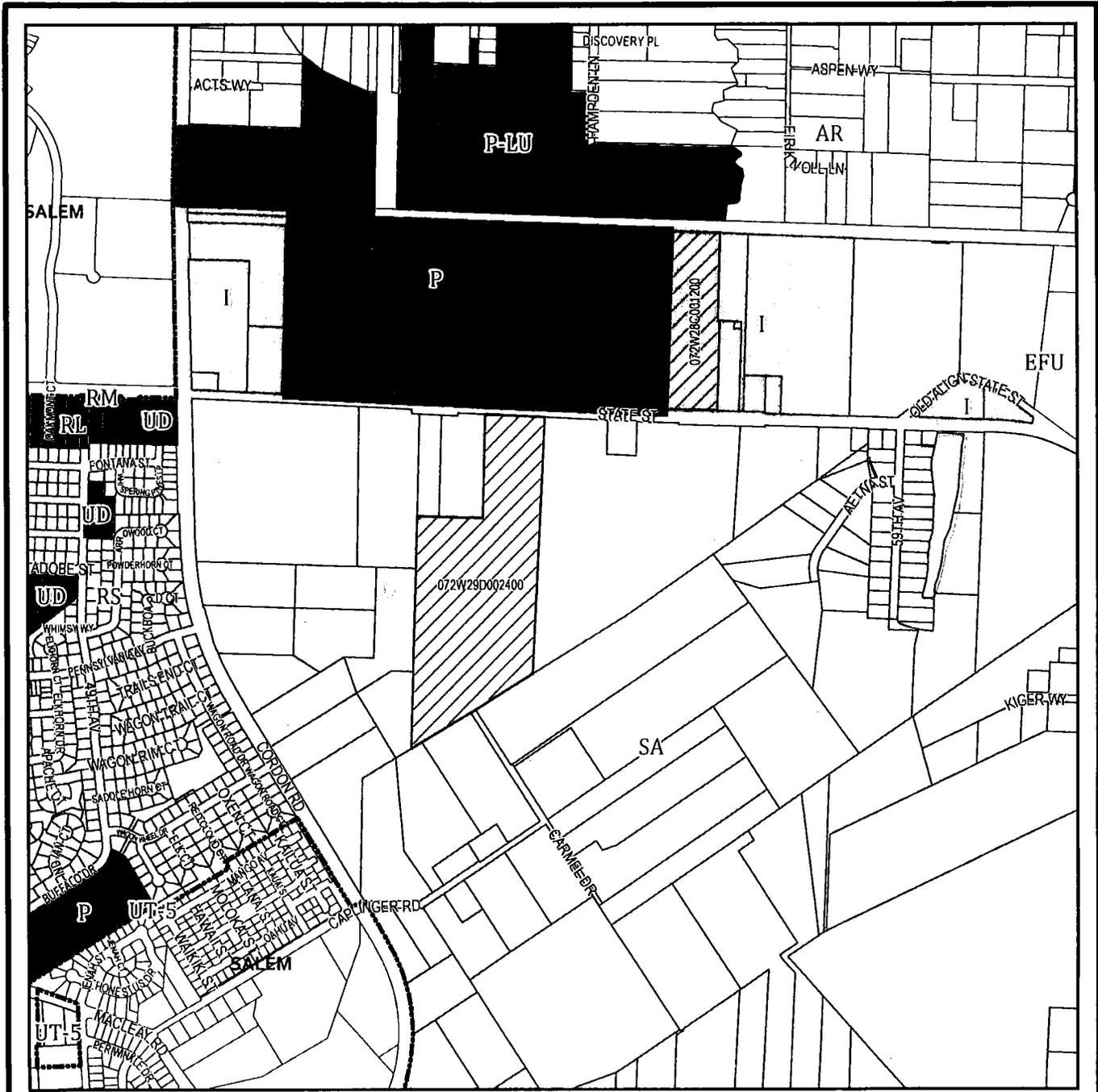
8. Because the land use in the vicinity is a mix of farming operations and rural residential housing, staff finds it appropriate to apply a 50-foot special setback to all BESS equipment and structures from the property lines. This shall not include access roads, parking areas, light poles, fences, gates 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.



# ZONING MAP

Input Taxlot(s): 072W28C001200, 072W29D002400

Owner Name: LEWIS LAND LLC

Situs Address: ( No Situs Address )  
 City/State/Zip:  
 Land Use Zone: SA  
 School District: SALEM-KEIZER  
 Fire District: MARION COUNTY NO.1

## Legend

-  Input Taxlots
-  Highways
-  Lakes & Rivers
-  Cities



scale: 1 in = 972 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.





MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 25, 2025

Department: Public Works

Title: Schedule adoption of an ordinance related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17 at the next board session.

Management Update/Work Session Date: Management Update: 2/11/25, Work Session: 4/15/25 Audio/Visual aids [ ]

Time Required: 0 min Contact: Brandon Reich Phone: 503-566-4175

Requested Action: Schedule adoption of an ordinance clarifying existing code provisions related to battery energy storage systems in the the Marion County Urban and Rural Zone Codes Chapters 16 and 17 at the next board session, July 9, 2025.

Issue, Description & Background: On April 15, 2025, the Marion County Board of Commissioners held a work session to discuss battery energy storage systems. These systems are not expressly contemplated in county zoning code, state statute or state administrative rule. The board expressed a desire to clarify the applicability of the existing code to this use and on May 14, 2025, initiated a process to consider code amendments. On June 11, 2025, the board held a hearing to consider amendments to clarify existing code provisions related to battery energy storage systems in the the Marion County Urban and Rural Zone Codes Chapters 16 and 17. The board approved the amendments and directed staff to prepare an ordinance, which is before the board today to schedule for adoption at the next board session, July 9, 2025.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Ordinance

Presenter: Brandon Reich

Department Head Signature: for Brandon Reich

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the matter of adopting amendments to ) LA 25-001  
clarify the applicability of existing code ) Legislative Amendment  
provisions related to battery energy storage )  
systems in the Marion County Urban and )  
Rural Zone Codes Chapters 16 and 17. )

AN ADMINISTRATIVE ORDINANCE

**ORDINANCE NO. \_\_\_\_\_**

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

**SECTION I. Purpose**

This ordinance is enacted pursuant to the authority granted general law counties in the State of Oregon by Oregon Revised Statutes (ORS) Chapters 203, 197, 215, and 227, and the comprehensive land use planning and coordination with local government provisions under Chapters 195 and 197.

**SECTION II. Authorization**

The Marion County Board of Commissioners initiated a legislative amendment to the Marion County Urban and Rural Zone Codes by Resolution No. 25R-7 dated May 14, 2025.

The Board held a public hearing on June 11, 2025, for which proper public notice and advertisement was given. The Board closed the hearing on June 11, 2025. All persons present during the public hearing and those provided notice of the hearing, were given the opportunity to speak or present written statements on the proposed amendments.

**SECTION III. Evidence and Findings**

The amendments of the Marion County Urban and Rural Zone Codes and the Marion County Comprehensive Plan made hereunder are based on consideration and analysis of the operation of present zoning regulations and requirements of state law. Due consideration was given to the evidence in the record. As set forth in Exhibit A, attached hereto and incorporated herein, the Board finds that the amendments to the Urban and Rural Zone Codes and Marion County Comprehensive Plan are in compliance with county ordinance and state law, its policies and requirements and federal law.

**SECTION IV. Amendments to Marion County Comprehensive Plan**

Marion County Code Title 16 (Marion County Urban Zone Code), Marion County Code Title 17 (Marion County Rural Zone Code), and Marion County Comprehensive Plan are amended as set forth in Exhibit B, attached hereto and incorporated herein.

**SECTION V. Severability**

Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or any policy, provision, findings, statement, conclusion, or designation to a particular land use or area of land, or any other portion, segment or element of this Ordinance or of any amendments thereto and adopted hereunder, be declared invalid for any reason, such declaration shall not affect the validity and continued application of any other portion or element of this Ordinance or amendments to the Comprehensive Plan, as amended herein; and if this Ordinance or any portion thereof should be held to be invalid on one ground, but valid on another, it shall be construed that the valid ground is the one upon which this Ordinance or any portion thereof was enacted.

**SECTION VI. Effective Date**

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect upon adoption.

SIGNED and FINALIZED this \_\_\_\_\_ day of \_\_\_\_\_, 2025 at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

**JUDICIAL NOTICE**

Oregon Revised Statutes (ORS) Chapter 197.830 provides that land use decisions may be reviewed by the Land Use Board of Appeals (LUBA) by filing a notice of intent to appeal within 21 days from the date this ordinance becomes final.

## Facts and Findings

### BACKGROUND

Commercial Battery Energy Storage Systems (“BESS”) use batteries to store electrical energy for use on the electrical grid. These systems are not explicitly listed in the county zoning code. These amendments provide the county the opportunity to clarify the applicability of existing code provisions related to battery energy storage systems and determine if they are a permitted use at this time.

### FACTS AND ANALYSIS

#### Code Applicability

While these facilities are not explicitly referenced in code, there are two existing code provisions that a BESS could be considered, depending on available evidence: a utility facility or a power generation facility.

Historically, utility facilities have been structures and facilities such as cellular towers, wastewater treatment facilities, and city wells, which can be found on urban or rural land, including resource farm and forest zones. These are usually owned by a public entity and provide regular utility service to customers in an area. While a BESS is connected to the electrical power grid, and may be located near a substation, it appears to be ancillary to the grid or substation and not a utility service itself. Without additional evidence and analysis, a commercial BESS cannot be considered a utility facility.

A commercial BESS could also be considered a power generation facility. Power generation involves storing power in some manner that gets converted to electricity for use on the grid, such as water stored at an elevation behind a dam which is used to generate electrical power. A BESS stores electrical power from the grid to be placed back on the same grid later. In this manner a BESS could be considered power generation because of its role in storing power for use on the electrical grid. However, a BESS stores power previously generated rather than generates new power for the grid. As a result of this process, and without additional evidence and analysis, a BESS cannot be considered a power generation facility.

At this time there do not appear to be zoning code provisions related to BESS in Oregon Statute or Oregon Administrative Rules.

#### Land Use Criteria and Standards

A commercial BESS is a more intensive use than many other uses contemplated in the zoning code. It also brings with it potential impacts that could be at least partially mitigated through criteria adopted in the zoning code and standards for development. The potential issues include fires; release of gases, chemicals, and metals; potential pollution of air, water and soil; loss of farmland; increased demands on emergency response; and decommissioning.

Future code amendments could adopt criteria and standards for these systems to mitigate potential impacts. These could include code amendments related to setbacks, farmland protection, fire system requirements, development of emergency response plans, facility monitoring, site development standards, decommissioning plan, and others.

### **DECISION**

Because battery energy storage systems are a novel use that are not explicitly allowed by county code, nor implicitly contemplated in code, and there are no zoning code provisions related to them in Oregon Statute or Oregon Administrative Rules, they are not allowed by the zoning code at this time without possible future amendments. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.

Based on the facts and findings above, the board approves the amendments to clarify the applicability of existing code provisions related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

Battery Energy Storage Amendments  
Legislative Amendment 2025-01

**ADDITIONS IN BOLD UNDERLINE**

Chapter 16.01

**GENERAL ZONING PROVISIONS**

Sections:

- 16.01.010 Zoning classification.
- 16.01.020 Designation of zones.
- 16.01.030 Comprehensive Plan designation and zone classifications.
- 16.01.040 Zoning map.
- 16.01.050 Battery Energy Storage Systems**

**16.01.010 Zoning classification.**

In order to achieve the intent and purpose in MCC 16.35.030, zoning classifications and overlay zones are hereby established for all unincorporated areas of Marion County located within urban growth boundaries as provided in Chapters 16.02 to 16.25 MCC. These classifications and overlay zones identify uses permitted subject to the development requirements in Chapter 16.24 MCC and Chapters 16.26 through 16.34 MCC. Conditional uses are subject to the development requirements in the applicable zone, in Chapters 16.26 through 16.34 MCC, and any requirements imposed as a condition of approval pursuant to MCC 16.40.030 and 16.40.040. Zone changes, other than legislative changes, are subject to the requirements of Chapters 16.26 through 16.34 MCC and any requirements imposed as a condition of approval pursuant to MCC 16.39.060 and 16.39.070. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.10.]

**16.01.020 Designation of zones.**

As prescribed in MCC 16.01.010, Marion County is divided into use zones. The zones included in this title are as follows:

Chapter	Classification	Abbreviation
16.02	Single-Family Residential	RS
16.03	Limited Multiple-Family Residential	RL
16.04	Multiple-Family Residential	RM
16.05	Commercial Office	CO
16.06	Commercial Retail	CR
16.07	Commercial General	CG
16.08	Highway Commercial	HC
16.09	Industrial Commercial	IC
16.10	Industrial Park	IP
16.11	General Industrial	IG
16.12	Heavy Industrial	IH
16.13	Urban Transition	UT
16.14	Reserved	

Chapter	Classification	Abbreviation
16.15	Urban Development	UD
16.16	Public	P

[Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.20.]

**16.01.030 Comprehensive Plan designation and zone classifications.**

Zone classifications implement the Comprehensive Plan designations. Because this title implements several city comprehensive plans and not all plan designations are identical for all cities, those in the Salem/Keizer Comprehensive Plan are used below. For cities other than Salem, the zoning administrator shall decide which of the following zones implement the applicable plan designation on the basis of the intent in the applicable comprehensive plan. The zone classifications below are listed in order of most restrictive to least restrictive under the appropriate plan designation. Following are the zones allowed in the Salem Area Comprehensive Plan designations:

Comprehensive Plan Designation	Zone Classification
Developing Residential	RS, UT, UD, RL, RM
Single-Family Residential	RS, UT, UD
Multifamily Residential	RL, RM, UT, UD
Commercial	CO, CR, CG, HC, UT, UD
Industrial	IC, IP, IG, IH, UT, UD
Community Service	P

[Ord. 1454 § 4 (Exh. B), 2023; Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.30.]

**16.01.040 Zoning map.**

This title includes official zoning maps. The maps, together with all explanatory matter thereon, identify the boundaries of the zones and overlay zones established in Chapters 16.02 to 16.25 MCC, and the application of land use regulations in this title to certain lands. The maps shall be filed in the office of the zoning administrator. The zoning administrator shall amend the maps when so directed by county ordinance. The maps shall be available for public review and copies of the maps shall be provided at reasonable cost. When requested the zoning administrator shall certify that a copy of all or a portion of any map “is the current zoning map contained in the Marion County Zoning Ordinance” on a specific date. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.40.]

**16.01.050 Battery Energy Storage Systems**

**Notwithstanding any other provision in code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.**

**Chapter 17.110  
GENERAL PROVISIONS**

Sections:

Article III. General Provisions

- 17.110.620 Zones – Official map.
- 17.110.630 Certification.
- 17.110.650 Location.
- 17.110.660 Amending official zoning map.
- 17.110.670 Replacement of official zoning map.
- 17.110.680 Administration of the title.
- 17.110.690 Minimum requirements.
- 17.110.700 Effect on other ordinances, agreements between parties.
- 17.110.705 Permit expiration dates.
- 17.110.710 Rules for interpretation of zone boundaries.
- 17.110.720 Interpretation of title.
- 17.110.725 Interpretation of uses.
- 17.110.730 Similar uses.
- 17.110.735 Battery Energy Storage Systems**
- 17.110.740 Fees.
- 17.110.755 Transferability.
- 17.110.760 Complaints regarding violations.
- 17.110.765 Board authority.
- 17.110.770 Vision clearance area.
- 17.110.780 Minimum street width.
- 17.110.790 Lots abutting a partial street.
- 17.110.800 Dwellings and all other buildings to be accessible to public street.
- 17.110.810 Application of zoning regulations.
- 17.110.820 Conformance and permits required.
- 17.110.830 Water resource protection.
- 17.110.831 Significant and potential mineral and aggregate sites.
- 17.110.832 Protection of scenic and natural areas and trails.
- 17.110.833 Stormwater management.
- 17.110.834 Noise impacts.
- 17.110.835 Fish and wildlife habitats.
- 17.110.836 Historic structures or sites.
- 17.110.838 Agricultural soils determination.
- 17.110.840 Amendment of text only.
- 17.110.850 Pending zone change proceedings.
- 17.110.860 Violations of regulations unlawful – Proof of violation prima facie evidence of owner’s responsibility.
- 17.110.870 Enforcement and penalties for violations.
- 17.110.880 Savings clause.

**17.110.720 Interpretation of title.**

A. The director may, in the administration of this title, issue an interpretation of its provisions consistent with subsections (B)(1) and (2) of this section. This interpretation is not a land use decision and is not appealable.

B. When, in the administration of this title, there is doubt by the director regarding the intent of this title, the director may request an interpretation of the provision by the planning commission or hearings officer, who may issue an interpretation of the question if they have determined that such interpretation is within their power and is not a legislative act. Any interpretation of this title shall be based on the following:

1. The purpose and intent of this title as applied to the particular section and question; and
2. The opinion of the Marion County legal counsel when requested by the director, planning commission or hearings officer.

C. The director, planning commission or hearings officer may decide that the interpretation of the question is not within their power or that there is insufficient basis upon which to make an interpretation and may request the director to study the problem and, where necessary, propose an amendment to this title.

D. The interpretation by the planning commission or hearings officer shall be forwarded to the board for its information. Copies of the interpretation shall also be furnished each commissioner, the hearings officer and the director. When such interpretation is of general public interest, copies of such interpretation shall be made available for public distribution. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.720.]

#### **17.110.725 Interpretation of uses.**

The following rules shall apply in interpreting use classification and descriptions:

A. Within each zone, uses are classified as “permitted” and “conditional.” Further, uses are functionally classified by description of the particular activity (such as “single-family residence”), or by reference to a category in the Standard Industrial Classification Manual, 1987 (SIC). The SIC is an aid to interpretations. Where the term used to describe a permitted or conditional use is defined in this code, the definition takes precedence over any SIC classification.

B. When uses have a functional SIC classification, the applicable SIC index number assigned to the manual is referenced as an aid to interpretation.

C. Where a use is not described with reference to the SIC manual or defined in this code, the words describing such use are to be given their ordinarily accepted meaning. The descriptions and lists of included activities in the SIC classifications may be used to interpret which use classification is appropriate for a particular use not specifically identified in this title.

D. A use defined in this code is also included within an SIC category, and it is the intent that the use defined in this code be allowed in a zone where the SIC category including the defined use is referenced even though the use is not specifically referenced in the zone.

E. A use defined in ORS Chapter 215 or OAR Chapter 660 takes precedence over any definition or SIC classification. [Ord. 1271 § 5, 2008. RZ Ord. § 110.725.]

#### **17.110.730 Similar uses.**

The director may permit in any zone any use not described or listed in this title for any other zone if, in the opinion of the director, the requested use is of the same general type and is similar to the uses permitted in the zone. Such review and permission shall be made in the same manner as other interpretations of this title. The director shall use the Standard Industrial Classification Manual, 1987, as a guide in making this interpretation. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.730.]

#### **17.110.735 Battery Energy Storage Systems**

**Notwithstanding any other provision in code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.**



# RWE

Marion County Board of Commissioners  
555 Court St NE, Suite 5232  
Salem, OR 97301

July 9, 2025

**Subject: Administrative Ordinance to Ban Battery Energy Storage in Marion County, Oregon**

Dear Marion County Board of Commissioners,

RWE Clean Energy currently has two battery energy storage system (BESS) projects in Marion County, Oregon—one fully permitted and another with a Conditional Use Permit (CUP) application under review. We have appreciated a constructive and collaborative relationship with the County's planning staff, which makes the recent news regarding a proposed ban on BESS particularly unexpected. Neither our landowners nor our development partners received prior notification of this proposal. We first became aware of the proposed administrative ordinance through media coverage on January 25, 2025.

As a national leader in battery storage, RWE currently operates 16 BESS facilities and has 8 additional sites under construction—all with a proven track record of zero BESS safety incidents. BESS technology is safe, compact, emission-free, and essential to ensuring grid reliability. In Marion County, BESS represents an important economic opportunity for landowners to diversify their income, which can help them maintain and invest further in their agricultural businesses. These systems typically occupy less than 1% of the land required for solar installations of equal megawattage and are strategically located near existing substations. It is important to clarify that battery storage systems are not renewable energy facilities; rather, they store existing grid power for dispatch during periods of high demand.

We are committed to supporting a transparent and informed decision-making process and are ready to provide any information the County may require. In light of this, we respectfully request that the County either reject Item 9 on the July 9, 2025 Board Session Agenda or postpone the vote to allow for meaningful stakeholder engagement.

On the behalf of RWE, we also request that we be provided notice of any decision by the Board to adopt these proposed code amendments.

Sincerely,



Cristina Gispert,  
Director, Utility Scale Development-West  
RWE Clean Energy, LLC  
Mobile: (619) 609-1803  
E-mail: [cristina.gispert@rwe.com](mailto:cristina.gispert@rwe.com)

RWE Clean Energy, LLC  
101 W. Broadway Ave, Suite  
1120, San Diego, CA,  
92101  
  
United States of America  
T +1 (512)-482-4099  
I [www.rwe.com](http://www.rwe.com)



**From:** [Gispert, Cristina](#)  
**To:** [Hodges, Whitney](#); [Pfeiffer, Steven L. \(POR\)](#); [Wilson, Kristine \(BEL\)](#); [Gurian, Gabrielle \(BEL\)](#); [Thompson, Alexandra](#); [Bilodeau, Monica](#)  
**Subject:** Fw: Marion County BESS Ordinance  
**Date:** Thursday, July 10, 2025 3:18:01 PM  
**Attachments:** [image001.png](#)

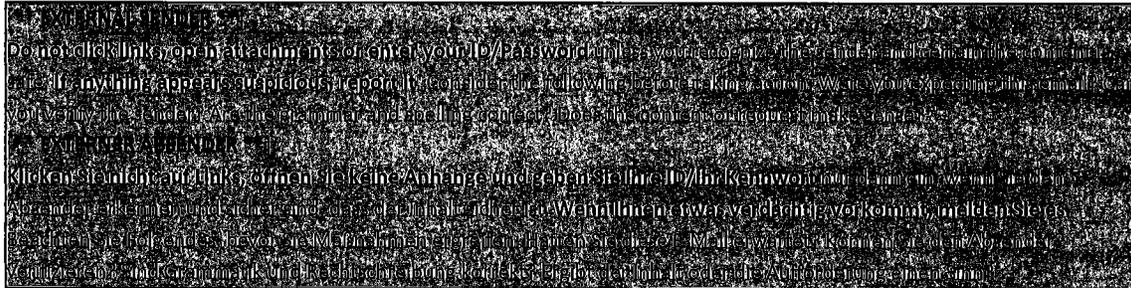
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See the email below where the planning Director in Marion county is acknowledging that the ordinance does not apply to our CUP application application.

Get [Outlook for iOS](#)

---

**From:** Brandon Reich <BREICH@co.marion.or.us>  
**Sent:** Thursday, July 10, 2025 12:55:16 PM  
**To:** John Lewis <john@jlpnliners.com>; John Audley <john@jjaconsults.com>; Gispert, Cristina <Cristina.Gispert@rwe.com>  
**Subject:** [EXT] RE: Marion County BESS Ordinance



I did not provide notice of the hearing to you because the amendments don't affect the BESS already approved on your property, nor the recent application for a BESS we received last week. The BESS on State Street has land use approval until July 3, 2028.

The amendments only affect applications moving forward after July 9, 2025.

If I can provide any additional information, please let me know.

Thank you,

Brandon

**From:** John Lewis <john@jlpnliners.com>  
**Sent:** Thursday, July 10, 2025 10:17 AM  
**To:** Brandon Reich <BREICH@co.marion.or.us>; John Audley <john@jjaconsults.com>; Cristina.Gispert@rwe.com  
**Subject:** Re: Marion County BESS Ordinance

**⚠ WARNING:** This email originated outside of Marion County.  
**DO NOT CLICK** links or attachments unless you trust the sender and know the content is safe.

---

Hi Brandon,

Regarding our conversation in the atrium yesterday, could you clarify why the county didn't notify me of the initial public hearing?

Thank you,

John Lewis, President  
JLPN Inc.  
Cell 503-932-9812  
[www.jlpnliners.com](http://www.jlpnliners.com)

---

**From:** Brandon Reich <[BREICH@co.marion.or.us](mailto:BREICH@co.marion.or.us)>  
**Sent:** Thursday, July 10, 2025 9:41:02 AM  
**To:** John Audley <[john@jjaconsults.com](mailto:john@jjaconsults.com)>; [Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com) <[cristina.gispert@rwe.com](mailto:cristina.gispert@rwe.com)>;  
John Lewis <[john@jlpnliners.com](mailto:john@jlpnliners.com)>  
**Subject:** Marion County BESS Ordinance

Please find a copy of our BESS ordinance attached.

Thank you,

Brandon



OREGON

**Brandon Reich | Manager and Planning Director**  
Building and Planning Division, Marion County Public Works  
✉ [breich@co.marion.or.us](mailto:breich@co.marion.or.us)  
☎ (503) 566-4175

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the matter of adopting amendments to clarify the applicability of existing code provisions related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

) LA 25-001  
) Legislative Amendment  
)  
)  
)

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1480

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

**SECTION I. Purpose**

This ordinance is enacted pursuant to the authority granted general law counties in the State of Oregon by Oregon Revised Statutes (ORS) Chapters 203, 197, 215, and 227, and the comprehensive land use planning and coordination with local government provisions under Chapters 195 and 197.

**SECTION II. Authorization**

The Marion County Board of Commissioners initiated a legislative amendment to the Marion County Urban and Rural Zone Codes by Resolution No. 25R-7 dated May 14, 2025.

The Board held a public hearing on June 11, 2025, for which proper public notice and advertisement was given. The Board closed the hearing on June 11, 2025. All persons present during the public hearing and those provided notice of the hearing, were given the opportunity to speak or present written statements on the proposed amendments.

**SECTION III. Evidence and Findings**

The amendments of the Marion County Urban and Rural Zone Codes and the Marion County Comprehensive Plan made hereunder are based on consideration and analysis of the operation of present zoning regulations and requirements of state law. Due consideration was given to the evidence in the record. As set forth in Exhibit A, attached hereto and incorporated herein, the Board finds that the amendments to the Urban and Rural Zone Codes and Marion County Comprehensive Plan are in compliance with county ordinance and state law, its policies and requirements and federal law.

**SECTION IV. Amendments to Marion County Comprehensive Plan**

Marion County Code Title 16 (Marion County Urban Zone Code), Marion County Code Title 17 (Marion County Rural Zone Code), and Marion County Comprehensive Plan are amended as set forth in Exhibit B, attached hereto and incorporated herein.

**SECTION V. Severability**

Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or any policy, provision, findings, statement, conclusion, or designation to a particular land use or area of land, or any other portion, segment or element of this Ordinance or of any amendments thereto and adopted hereunder, be declared invalid for any reason, such declaration shall not affect the validity and continued application of any other portion or element of this Ordinance or amendments to the Comprehensive Plan, as amended herein; and if this Ordinance or any portion thereof should be held to be invalid on one ground, but valid on another, it shall be construed that the valid ground is the one upon which this Ordinance or any portion thereof was enacted.

**SECTION VI. Effective Date**

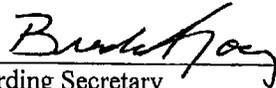
Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect upon adoption.

SIGNED and FINALIZED this 9<sup>th</sup> day of July, 2025 at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary

**JUDICIAL NOTICE**

Oregon Revised Statutes (ORS) Chapter 197.830 provides that land use decisions may be reviewed by the Land Use Board of Appeals (LUBA) by filing a notice of intent to appeal within 21 days from the date this ordinance becomes final.

## Facts and Findings

### BACKGROUND

Commercial Battery Energy Storage Systems ("BESS") use batteries to store electrical energy for use on the electrical grid. These systems are not explicitly listed in the county zoning code. These amendments provide the county the opportunity to clarify the applicability of existing code provisions related to battery energy storage systems and determine if they are a permitted use at this time.

### FACTS AND ANALYSIS

#### Code Applicability

While these facilities are not explicitly referenced in code, there are two existing code provisions that a BESS could be considered, depending on available evidence: a utility facility or a power generation facility.

Historically, utility facilities have been structures and facilities such as cellular towers, wastewater treatment facilities, and city wells, which can be found on urban or rural land, including resource farm and forest zones. These are usually owned by a public entity and provide regular utility service to customers in an area. While a BESS is connected to the electrical power grid, and may be located near a substation, it appears to be ancillary to the grid or substation and not a utility service itself. Without additional evidence and analysis, a commercial BESS cannot be considered a utility facility.

A commercial BESS could also be considered a power generation facility. Power generation involves storing power in some manner that gets converted to electricity for use on the grid, such as water stored at an elevation behind a dam which is used to generate electrical power. A BESS stores electrical power from the grid to be placed back on the same grid later. In this manner a BESS could be considered power generation because of its role in storing power for use on the electrical grid. However, a BESS stores power previously generated rather than generates new power for the grid. As a result of this process, and without additional evidence and analysis, a BESS cannot be considered a power generation facility.

At this time there do not appear to be zoning code provisions related to BESS in Oregon Statute or Oregon Administrative Rules.

#### Land Use Criteria and Standards

A commercial BESS is a more intensive use than many other uses contemplated in the zoning code. It also brings with it potential impacts that could be at least partially mitigated through criteria adopted in the zoning code and standards for development. The potential issues include fires; release of gases, chemicals, and metals; potential pollution of air, water and soil; loss of farmland; increased demands on emergency response; and decommissioning.

Future code amendments could adopt criteria and standards for these systems to mitigate potential impacts. These could include code amendments related to setbacks, farmland protection, fire system requirements, development of emergency response plans, facility monitoring, site development standards, decommissioning plan, and others.

### **DECISION**

Because battery energy storage systems are a novel use that are not explicitly allowed by county code, nor implicitly contemplated in code, and there are no zoning code provisions related to them in Oregon Statute or Oregon Administrative Rules, they are not allowed by the zoning code at this time without possible future amendments. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.

Based on the facts and findings above, the board approves the amendments to clarify the applicability of existing code provisions related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

Battery Energy Storage Amendments  
Legislative Amendment 2025-01

**ADDITIONS IN BOLD UNDERLINE**

Chapter 16.01

GENERAL ZONING PROVISIONS

Sections:

- 16.01.010 Zoning classification.
- 16.01.020 Designation of zones.
- 16.01.030 Comprehensive Plan designation and zone classifications.
- 16.01.040 Zoning map.
- 16.01.050 Battery Energy Storage Systems**

**16.01.010 Zoning classification.**

In order to achieve the intent and purpose in MCC 16.35.030, zoning classifications and overlay zones are hereby established for all unincorporated areas of Marion County located within urban growth boundaries as provided in Chapters 16.02 to 16.25 MCC. These classifications and overlay zones identify uses permitted subject to the development requirements in Chapter 16.24 MCC and Chapters 16.26 through 16.34 MCC. Conditional uses are subject to the development requirements in the applicable zone, in Chapters 16.26 through 16.34 MCC, and any requirements imposed as a condition of approval pursuant to MCC 16.40.030 and 16.40.040. Zone changes, other than legislative changes, are subject to the requirements of Chapters 16.26 through 16.34 MCC and any requirements imposed as a condition of approval pursuant to MCC 16.39.060 and 16.39.070. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.10.]

**16.01.020 Designation of zones.**

As prescribed in MCC 16.01.010, Marion County is divided into use zones. The zones included in this title are as follows:

Chapter	Classification	Abbreviation
16.02	Single-Family Residential	RS
16.03	Limited Multiple-Family Residential	RL
16.04	Multiple-Family Residential	RM
16.05	Commercial Office	CO
16.06	Commercial Retail	CR
16.07	Commercial General	CG
16.08	Highway Commercial	HC
16.09	Industrial Commercial	IC
16.10	Industrial Park	IP
16.11	General Industrial	IG
16.12	Heavy Industrial	IH
16.13	Urban Transition	UT
16.14	Reserved	

Chapter	Classification	Abbreviation
16.15	Urban Development	UD
16.16	Public	P

[Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.20.]

**16.01.030 Comprehensive Plan designation and zone classifications.**

Zone classifications implement the Comprehensive Plan designations. Because this title implements several city comprehensive plans and not all plan designations are identical for all cities, those in the Salem/Keizer Comprehensive Plan are used below. For cities other than Salem, the zoning administrator shall decide which of the following zones implement the applicable plan designation on the basis of the intent in the applicable comprehensive plan. The zone classifications below are listed in order of most restrictive to least restrictive under the appropriate plan designation. Following are the zones allowed in the Salem Area Comprehensive Plan designations:

Comprehensive Plan Designation	Zone Classification
Developing Residential	RS, UT, UD, RL, RM
Single-Family Residential	RS, UT, UD
Multifamily Residential	RL, RM, UT, UD
Commercial	CO, CR, CG, HC, UT, UD
Industrial	IC, IP, IG, IH, UT, UD
Community Service	P

[Ord. 1454 § 4 (Exh. B), 2023; Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.30.]

**16.01.040 Zoning map.**

This title includes official zoning maps. The maps, together with all explanatory matter thereon, identify the boundaries of the zones and overlay zones established in Chapters 16.02 to 16.25 MCC, and the application of land use regulations in this title to certain lands. The maps shall be filed in the office of the zoning administrator. The zoning administrator shall amend the maps when so directed by county ordinance. The maps shall be available for public review and copies of the maps shall be provided at reasonable cost. When requested the zoning administrator shall certify that a copy of all or a portion of any map "is the current zoning map contained in the Marion County Zoning Ordinance" on a specific date. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.40.]

**16.01.050 Battery Energy Storage Systems**

**Notwithstanding any other provision in code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.**

**Chapter 17.110  
GENERAL PROVISIONS**

Sections:

Article III. General Provisions

- 17.110.620 Zones – Official map.
- 17.110.630 Certification.
- 17.110.650 Location.
- 17.110.660 Amending official zoning map.
- 17.110.670 Replacement of official zoning map.
- 17.110.680 Administration of the title.
- 17.110.690 Minimum requirements.
- 17.110.700 Effect on other ordinances, agreements between parties.
- 17.110.705 Permit expiration dates.
- 17.110.710 Rules for interpretation of zone boundaries.
- 17.110.720 Interpretation of title.
- 17.110.725 Interpretation of uses.
- 17.110.730 Similar uses.
- 17.110.735 Battery Energy Storage Systems**
- 17.110.740 Fees.
- 17.110.755 Transferability.
- 17.110.760 Complaints regarding violations.
- 17.110.765 Board authority.
- 17.110.770 Vision clearance area.
- 17.110.780 Minimum street width.
- 17.110.790 Lots abutting a partial street.
- 17.110.800 Dwellings and all other buildings to be accessible to public street.
- 17.110.810 Application of zoning regulations.
- 17.110.820 Conformance and permits required.
- 17.110.830 Water resource protection.
- 17.110.831 Significant and potential mineral and aggregate sites.
- 17.110.832 Protection of scenic and natural areas and trails.
- 17.110.833 Stormwater management.
- 17.110.834 Noise impacts.
- 17.110.835 Fish and wildlife habitats.
- 17.110.836 Historic structures or sites.
- 17.110.838 Agricultural soils determination.
- 17.110.840 Amendment of text only.
- 17.110.850 Pending zone change proceedings.
- 17.110.860 Violations of regulations unlawful – Proof of violation prima facie evidence of owner’s responsibility.
- 17.110.870 Enforcement and penalties for violations.
- 17.110.880 Savings clause.

**17.110.720 Interpretation of title.**

A. The director may, in the administration of this title, issue an interpretation of its provisions consistent with subsections (B)(1) and (2) of this section. This interpretation is not a land use decision and is not appealable.

B. When, in the administration of this title, there is doubt by the director regarding the intent of this title, the director may request an interpretation of the provision by the planning commission or hearings officer, who may issue an interpretation of the question if they have determined that such interpretation is within their power and is not a legislative act. Any interpretation of this title shall be based on the following:

1. The purpose and intent of this title as applied to the particular section and question; and
2. The opinion of the Marion County legal counsel when requested by the director, planning commission or hearings officer.

C. The director, planning commission or hearings officer may decide that the interpretation of the question is not within their power or that there is insufficient basis upon which to make an interpretation and may request the director to study the problem and, where necessary, propose an amendment to this title.

D. The interpretation by the planning commission or hearings officer shall be forwarded to the board for its information. Copies of the interpretation shall also be furnished each commissioner, the hearings officer and the director. When such interpretation is of general public interest, copies of such interpretation shall be made available for public distribution. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.720.]

#### **17.110.725 Interpretation of uses.**

The following rules shall apply in interpreting use classification and descriptions:

A. Within each zone, uses are classified as “permitted” and “conditional.” Further, uses are functionally classified by description of the particular activity (such as “single-family residence”), or by reference to a category in the Standard Industrial Classification Manual, 1987 (SIC). The SIC is an aid to interpretations. Where the term used to describe a permitted or conditional use is defined in this code, the definition takes precedence over any SIC classification.

B. When uses have a functional SIC classification, the applicable SIC index number assigned to the manual is referenced as an aid to interpretation.

C. Where a use is not described with reference to the SIC manual or defined in this code, the words describing such use are to be given their ordinarily accepted meaning. The descriptions and lists of included activities in the SIC classifications may be used to interpret which use classification is appropriate for a particular use not specifically identified in this title.

D. A use defined in this code is also included within an SIC category, and it is the intent that the use defined in this code be allowed in a zone where the SIC category including the defined use is referenced even though the use is not specifically referenced in the zone.

E. A use defined in ORS Chapter 215 or OAR Chapter 660 takes precedence over any definition or SIC classification. [Ord. 1271 § 5, 2008. RZ Ord. § 110.725.]

#### **17.110.730 Similar uses.**

The director may permit in any zone any use not described or listed in this title for any other zone if, in the opinion of the director, the requested use is of the same general type and is similar to the uses permitted in the zone. Such review and permission shall be made in the same manner as other interpretations of this title. The director shall use the Standard Industrial Classification Manual, 1987, as a guide in making this interpretation. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.730.]

#### **17.110.735 Battery Energy Storage Systems**

**Notwithstanding any other provision in code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.**



MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: July 9, 2025

Department: Public Works

Title: Consider adoption of an ordinance related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

Management Update/Work Session Date: Management Update: 2/11/25, Work Session: 4/15/25 Audio/Visual aids

Time Required: 5 min Contact: Brandon Reich Phone: 503-566-4175

Requested Action: Staff recommended motion: Adopt an ordinance clarifying existing code provisions related to battery energy storage systems in the the Marion County Urban and Rural Zone Codes Chapters 16 and 17. Other motion options for consideration are: 1. Adopt the ordinance with modified language, 2. Decline to adopt the ordinance at this time.

Issue, Description & Background: On April 15, 2025, the Marion County Board of Commissioners held a work session to discuss battery energy storage systems. These systems are not expressly contemplated in county zoning code, state statute or state administrative rule. The board expressed a desire to clarify the applicability of the existing code to this use and on May 14, 2025, initiated a process to consider code amendments. On June 11, 2025, the board held a hearing to consider amendments to clarify existing code provisions related to battery energy storage systems in the the Marion County Urban and Rural Zone Codes Chapters 16 and 17. The board approved the amendments and on June 25, 2025, scheduled adoption of the ordinance for today. The ordinance is before the board for consideration of adoption.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Ordinance

Presenter: Brandon Reich

Department Head Signature: For Brandon Reich



**Marion County Commissioners Meeting-July 9,2025**

**00:10:10-00:14:20**

Colm Willis        Okay, good morning and welcome to our weekly board session. It's Wednesday, July 9th, 2025. It's 9:07. We're here in the center hearing room at 555 Core Street, Northeastern Salem. As always, we start with the Pledge of Allegiance, so if you'd please join me. I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all. Thank you, everyone. We do have a couple of folks sign up for public comment. So I have Christina Gisbert, is that right? If you want to just come right over there. And then John Lewis, is that right? Lewis, you're on deck. Right over the side. So see how that chair is there? Okay. Okay. Thank you. Then if you could just introduce yourself for the record. Say where you're from, kind of what town you live in, and then go for it.

Christina Gisbert    Yeah. So my name is Christina Gisbert.

Colm Willis        Is that, pull up the microphone. Is that microphone on?

Christina Gisbert    Hello? Okay. Wow. Okay. That has to be pretty close. My name is Christina Gisbert. I work for RWE Clean Energy. We're headquartered in Austin, Texas. I live in San Diego. I'm here today with regard to item nine on the agenda. We presently have two energy storage projects here in Marion County, one of which we have a CUP for, the other of which we have an application in for consideration. We were not notified of the ban that we're going to take action on today. We didn't find out about it until June 25th through the press. You know, we've been meeting with the county planning department and had a really great collaborative experience going over the permitting process. And so, we're a bit blindsided by this action that we're taking today. And we're hoping that the county will reconsider. We reached out to our landowners and our development partners, and they didn't know either. So I just wanted to inform the county that RWE is a national leader in energy storage. We presently have 16 energy storage projects under operation and another eight under construction. We have not had a single battery safety incident at any of our facilities. And I just wanted to express that the technology is safe, it's compact, and it's emissions-free. It's the smallest power plant that you can build in the modern era. The batteries stand only 10 feet tall, and they take up less than one percent of the land that a solar facility would take up of equal megawattage. So, they are tiny. They're great for urban environments. They're great for agricultural environments that want to preserve as much land as possible. We also provide a good economic opportunity for landowners. They can collect rent for these facilities. And so we're hoping that the county reconsiders and either delays the vote on item nine or rejects the outright ban. We're more than happy to provide our expertise. We have battery safety, third-party battery safety experts that we can offer to help inform the county on battery safety and how

we build these facilities properly. We also request that we provide, the county provides us a notice of any action that is taken with regard to the battery systems. And that's essentially what I've come to say. I appreciate your consideration.

Colm Willis Thank you so much. Thank you.

Speaker 3 Okay. Yeah, please. Do we have your email address or address for sending notice?

Christina Gisbert Yeah.

Speaker 3 Okay. Great. Thank you.

Colm Willis Thank you. All right. John, you're up.

### **Marion County Commissioners Meeting-July 9,2025**

**00:47:00-00:52:28**

Kevin Cameron I'll move that we approve incoming funds in our government agreement with the Oregon State Marine Board in the amount of \$304,395 to provide law enforcement services related to recreational boating [00:47:00] on Oregon waterways through June 30, 2027.

Colm Willis I second the motion. We have a motion and a second. Is there any further discussion? Seeing none, all those in favor signify by saying aye.

Kevin Cameron Aye.

Colm Willis Aye. The motion passes. Thank you, gentlemen. Thank you. Thank you. OK, Brandon, you're up next. And we're going to consider approval of an administrative ordinance adopting amendments to clarify the applicability of existing code provisions related to battery energy storage systems in the Marion County Urban and Rural Codes, Chapters 16 and 17, as referenced in Exhibit A and Exhibit B.

Brandon Reich Good morning, commissioners. For the record, Brandon Reich, Marion County Planning Director. On April 15, the Marion County Board of Commissioners held a work session to discuss battery energy storage systems. These systems are not expressly contemplated in county zoning code, state statute, or state administrative rule. The board expressed a desire to clarify the applicability of the existing code to the use, and on May 14, initiated a process to consider code amendments. On June 11, the board held a hearing to consider amendments to clarify existing code provisions related to these systems. The board approved the amendments, and on June 25, scheduled adoption of the ordinance for today.

The ordinance is before the board for consideration of adoption. I want to point out, there were the public comments earlier. The gentleman that testified that owns property, he has a currently approved battery energy storage system. It's east of Salem, near the Bethel substation. And these amendments do not affect that existing approval. That's already in place. It's able to be constructed until 2028. He also has an application in. We received it last week for a different site, and these amendments don't affect that application either. These amendments affect any application going forward, nothing that's currently in process. Those are part of a different process, and I did connect with the gentleman and everyone here, and they'll be aware of the... So the next steps in this process would be to develop some standards that the board could consider for how a battery energy storage system could be applied for in Marion County. And one of the components of that is even verify with the state on rural land that these are allowed under some method of the existing zoning that the state's approved in the statute. So, the people here that provided testimony or comments this morning, I've connected with, and they'll be able to be following the process for the standards that we would develop to bring to the board for the board to consider.

Colm Willis        Okay, thank you.

Brandon Reich     Thank you.

Colm Willis        Commissioner Cameron, do you have a question?

Kevin Cameron    Yeah, so Brandon, I just want to make sure, so you're saying those projects are gonna move forward, but we don't have standards developed yet.

Brandon Reich     The one project is approved to move forward, be built by 2028, the other was just applied for.

Kevin Cameron    Okay.

Brandon Reich     And we don't have a made, planning hasn't made a decision on that one yet.

Kevin Cameron    Okay, so part of what we, I thought what we did was take action, Mr. Chair, is take action because we didn't have any standards, state didn't have any standards. We said, whoa, time out here, we want to make sure. This reminds me of the solar issue that came to us where we had a room full of people standing outside on both sides of the issue because of what it was doing to farmland, et cetera. So, and we had to make sure we took the right action. So, what I'm wondering is if we approve this item, adopting these amendments, are you still having a process where these folks that stakeholders are gonna be able to engage in that process to help set the standards that protect them as well as the farmland and neighbors, et cetera?

Brandon Reich     Absolutely.

Kevin Cameron And then will we come back and see those standards again?

Brandon Reich Absolutely.

Kevin Cameron So basically what we, I just want to make sure by approving this today, one project's moving forward already, the other one's on your desk that potentially could move forward. There won't be other projects until we have moved forward with these new standards. Is that accurate?

Brandon Reich Correct.

Colm Willis Okay. Those are all my questions.

Kevin Cameron Got it. Yeah, I just want to make sure.

Colm Willis Given that context, I'm comfortable moving forward.

Kevin Cameron All right.

Brandon Reich The committee to develop the standards would include experts in the field as well as people farming property, as neighborhood groups, people who are interested or property owners who could be affected. So we're gonna have a breadth of people involved to decide how to best manage these to not impact the community.

Kevin Cameron Yeah, so things like the notice we were just talking, somebody was talking about, they didn't get notified. So if somebody was applying for one of these, a permit to cite one of these things, in our standards there would be, because the state doesn't have it now, but we would have some sort of notification standard where we would notify existing property owners.

Brandon Reich Yes, absolutely part of it.

Kevin Cameron All right. Good. Okay.

Colm Willis Okay. [inaudible 00:51:56]

Kevin Cameron All right, Mr. Chair. I will move that we approve an administrative ordinance adopting amendments to clarify the applicability of existing code provisions related to the battery energy storage systems in Marion County urban and rural zone codes, chapter 16, 17, as referenced in exhibit A and exhibit B.

Colm Willis I'll second the motion. We have a motion to second. Is there any further discussion? Seeing none, all those in favor signify by saying aye. Aye.

Kevin Cameron Aye.

Colm Willis Motion passes. Thank you, Brian. Thank you, commissioners.







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**FOR OFFICE USE ONLY:**

Appeal accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

Case Number:

- Filing fee
- File attached

**Perkins  
Coie**

1301 Second Avenue  
Suite 4200  
Seattle, WA 98101

VENDOR: 241225-001  
Marion County

CHECK NO:  
2216267

INVOICE DATE	INV. NO	COMMENT	INV. AMOUNT
08/13/2025	20250813	Filing fee for appeal with Marion County	250.00
TOTAL CHECK AMOUNT			\$250.00

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

**Perkins  
Coie**

1301 Second Avenue  
Suite 4200  
Seattle, WA 98101

U.S. Bank Seattle  
1420 Fifth Avenue  
Seattle, WA 98101

19-10/1250

DATE  
08/14/2025

CHECK NO.  
2216267

AMOUNT  
\*\*\$250.00

PAY Two Hundred Fifty and 00/100 Dollar(s).....

TO THE ORDER OF Marion County

PERKINS COIE  
VOID IF NOT NEGOTIATED WITHIN SIX MONTHS

*William G. Maloney*

⑈ 2216267⑈ ⑆ 25000105⑆ 153595416220⑈

Exhibit 20  
Page 3 of 14



appeal.”

This Notice of Appeal and Request for Hearing identifies that reasons that the Decision was factually or legally incorrect, in addition to other reasons that may be provided pursuant to the appeal process. The reasons that the County erred in rendering the Decision include, but are not limited to the following:

- The Decision was legally incorrect and inconsistent with applicable law, including by misinterpreting and misapplying the factors in MCC 17.136.040(I), ORS 215.275(2), and OAR 660-033-0130(16) regarding utility facilities necessary for public service;
- The Decision was legally incorrect and inconsistent with applicable law, including ORS Ch. 215, Statewide Planning Goal 3, and interpreting case law, including but not limited to *Brentmar v. Jackson Cnty.*, 900 P.2d 1030, 321 Or. 481 (1995);
- The Decision was factually incorrect and not supported by substantial evidence;
- The Decision incorrectly concludes that BESS cannot be utility facilities necessary for public service;
- The Decision incorrectly concludes that the Proposed Development could not satisfy one or more of the factors in MCC 17.136.040(I); and
- The Decision improperly applies ORS 215.296.

The County rendered its decision on August 1, 2025. (Ex. 1.) Fifteen (15) days from the date the decision was rendered is August 15, 2025, and the Decision states that an appeal must be filed by August 18, 2025. *Id.* This Notice of Appeal and Request for Hearing, dated August 14, 2025, is therefore timely and complies with MCC 17.115.110.

Appellant will provide supporting evidence pursuant to the hearing procedures in Ch. 17.11 MCC to demonstrate that the Decision was factually or legally incorrect. Appellant requests a hearing to present testimony and evidence demonstrating that the Decision is incorrect.

#### 4. Conclusion

For the reasons stated herein, Appellant provides this Notice of Appeal and Request for Hearing.



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Steven L. Pfeiffer, Appellant's Representative  
Perkins Coie LLP  
1120 NW Couch St., 10<sup>th</sup> Floor  
Portland, OR 97209-4128  
Phone: (503)-727-2261

Dated: 8/14/2025

**EXHIBITS**

Exhibit 1: Planning Division Decision on Administrative Review No. 2025-015

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. 25-015**

**APPLICATION:** Application of Remington BESS, LLC, on behalf of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust for an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200).

**DECISION:** The Planning Director for Marion County has **DENIED** the above-described Administrative Review.

**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 **August 18<sup>th</sup>, 2025**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 19<sup>th</sup>, 2025**, unless appealed.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Exclusive Farm Use (EFU) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the northern side of Pearson Rd SE within a half mile of the intersection with Parrish Gap Rd SE. The proposed area for the Battery Energy Storage System (BESS) is the approximately 15 acres north of the PacifiCorp Parrish Gap Substation which is located on Pearson Rd SE, east-adjacent to the property at 5387 Pearson. The proposed area is in agricultural use for either grass seed or hay production with the rest of the 133.77-acre parcel. There are two mapped perennial streams and one mapped intermittent stream across the subject parcel. Based on the site plan, the BESS would be sited upon the southernmost perennial stream and the intermittent stream, as well as being nearly adjacent to the northern perennial stream. All three of these flow into canals managed by the Santiam Water Control District for the purpose of providing water rights to farmers in the district.

The subject property was itself the subject of a property line adjustment in 2008 (PLA08-044) which clarifies that the 46.35-acre tax lot upon which the BESS is proposed is itself part of a larger 133.77-acre parcel consisting of three tax lots (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200). The property line adjustment was between two parcels, and yielded a 5-acre parcel which contains the homesite at 5387 Pearson Rd SE (not involved in this application) and the 133.77-acre parcel upon which the 15-acre BESS is proposed by this application. While the subject parcel consists of three tax lots, it appears by all indications that PLA08-044 was completed and therefore the subject parcel is legal for land use purposes.

3. Surrounding uses are agricultural and residential. Lands north and east of the subject parcel are in the EFU zone and devoted to large scale agriculture, particularly of grass seed and hay. Lands directly to the south are in the SA (Special Agriculture) zone and in use for agriculture and rural homesites. On the other side of those SA zoned lands is a relatively dense neighborhood of AR (Acreage Residential) zoned parcels. To the west of the subject parcel is another parcel in agricultural use in conjunction with the subject parcel, and a parcel in rural residential use. Those parcels are bordered by Parrish Gap Rd SE, and west of Parrish Gap is the southeastern corner of a large (approximately 375-acre) AR zoned area devoted to rural residences and hobby farms. The lands to the north and east, devoted to agricultural purposes, are mostly devoid of trees, and east of Duckflat Rd SE is a significant area of wetlands (both natural and manmade). The lands to the west and south of the subject parcel, and specifically south of Pearson Rd and West of Parrish Gap, are relatively densely developed and densely treed lands.

4. The applicants are proposing to place a battery energy storage system (BESS) on a 15-acre area of the subject parcel to store electricity.
5. The subject parcel is comprised of approximately 63.5% high value soils. The proposed 15-acre project area is primarily sited upon class 2 Abiqua silty clay loam, class 2 McAlpin silty clay loam, and class 3 Waldo silty clay loam.
6. Various agencies replied for the request for comment regarding the application:

Marion County Building Department commented: "No Building Inspection concerns. Structural permit is not required as the energy storage facility is for utility purposes and not subject to the requirements of the 2022 OSSC. Separate electrical permit(s) is required to be obtained prior to development."

Marion County Land Development, Engineering and Permits requested the following be included:

**ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required. In order to achieve maximum intersection sight distance, the access approach shall be situated as close to directly opposing the driveway serving #5288 Pearson Rd, as feasible, based upon preliminary field observation.
- B. Stormwater detention may be required upon 0.5-acres or more of development.
- C. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits.
- D. Utility work in the public right-of-way, such as electrical Point of Interconnection (POI) serving the facility, requires a separate PW Engineering permit.

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 and specifically requested denial because a BESS is not a utility facility, is not necessary for public service, is not a commercial power generation facility, and because appropriate conditions have not been developed. The full comments from FOMC can be found in the case file. FOMC also submitted six exhibits:

- (1) Tax assessor information for Tax Account No. 535412
  - (2) 2025-2025 Property Tax Account No. 535412,
  - (3) The applicant's site plan
  - (4) A map of PGE substations located in Marion County,
  - (5) EFSC Meeting May 2, 2025 Agenda Item C Overview of Battery Energy Storage Systems
  - (6) The agenda review form for the June 11, 2025 Marion County Board of Commissioners session to discuss BESS, including a memo with proposed new code language that was subsequently adopted on July 9, 2025
- The FOMC exhibits can be found in full in the case file.

Oregon Department of Fish and Wildlife commented: "Prior to site development (grading, vegetation management), the applicant should complete grassland bird surveys. Disturbance to nesting grassland birds should be minimized by limiting these actions so that they occur outside of the breeding season (April 1 – July 15)."

Santiam Water Control District (SWCD) commented with concerns regarding adverse impacts on water quality from construction stormwater, adverse impacts on water quality from increased impervious surfaces, adverse impacts on water quality due to pollutants from the BESS operation, and adverse impacts on farm use. SWCD explains that the area proposed for the BESS has water rights that will need to be transferred. The property has a water pump that will be oversized for the reduced water right and without modification would dispense an illegal amount of water after the forfeiture of the existing water right. Therefore, SWCD will require an SWCD-approved method of measuring water use on the property.

SWCD suggests the following conditions of approval (paraphrased by staff) if the county were to approve the proposal:

- A. The applicant shall construct on-site stormwater detention facilities sufficient for a 50-year storm event.
- B. The applicant shall enter into a consent agreement with SWCD.
- C. The applicant shall provide environmental planning for review by the County and SWCD to ensure that no pollution from the proposed BESS enters the drainage ditch and/or SWCD facilities.
- D. The landowner shall deed its interest in the SWCD Water back to SWCD.
- E. The property owner shall amend its SWCD water delivery contract to exclude the 15-acres.
- F. The property owner shall install an SWCD-approved method of measuring water use on the property.

The entire comment submitted by SWCD is included in the case file.

Turner Fire District has reviewed this project and has the following comments.

1. Fire service features including fire apparatus access and fire protection water supplies are required to comply with the 2022 Oregon Fire Code (OFC). In order to assist applicants, design professionals, and developers, fire agencies throughout Marion County have provided the 2024 Marion County Fire Code Applications Guide (MCFCAG). The following links to the OFC and the MCFCAG are provided as follows.
  - a. The 2022 Oregon Fire Code contains the currently adopted fire and life safety regulations for the State of Oregon. The full text of the OFC is available through the International Code Council's website at the following link: <https://codes.iccsafe.org/content/ORFC2022P1>
  - b. The 2024 Marion County Fire Code Applications Guide contains guidelines established by the fire agencies throughout Marion County to assist designers and applicants with how OFC requirements are to be applied to their projects. The following link to the 2024 MCFCAG is provided on the Turner Fire District website: Click the "Public Information" link at the bottom of the main page. Click the "Rural Access Standards" link. This opens the MCFCAG document which is located at the following link: [https://www.turnerfire.com/content/files/M\\_C%20App%20Guide%207-2024\(3\).pdf](https://www.turnerfire.com/content/files/M_C%20App%20Guide%207-2024(3).pdf)
2. OFC 505 Address identification signs shall be provided.
3. OFC 506 Key box(s) is/are to be installed in an approved location where access to or within a structure or an area is necessary for lifesaving or fire-fighting purposes when required by the fire code official. **NOTE:** TFD does not require key boxes. However, *if occupants choose* to secure property, facilities, structures, or areas in such a manner which will inhibit immediate fire access, key boxes if installed, shall be of a design approved by Turner Fire District.
4. OFC 509 Fire protection equipment, gas shutoff valves, electric meters, service switches, and other utility equipment shall be clearly identified, readily visible, and legibly marked in an approved manner. Rooms containing controls shall be identified for the use of the fire department. Signs shall be constructed of durable materials, permanently installed, and maintained.
5. OFC 1207 Electrical energy storage systems (ESS) shall be in accordance with OFC Chapter 12 and specifically section 1207.

All other commenting agencies either declined to comment or stated no objection to the proposal.

7. On April 15<sup>th</sup>, 2025, the Marion County Board of Commissioners held a work session to discuss Battery Energy Storage Systems (BESS). These systems are not expressly contemplated in county zoning code, state statute or state administrative rule. The Marion County Board of Commissioners determined that BESSs are not a "Utility Facility Necessary for Public Service" as found in MCC 17.137.040(I), and that furthermore there is no use identified in the MCC that a BESS could fall under. Therefore, BESSs are not permitted in any zone within Marion County. The board expressed a desire to clarify the applicability of existing code to this use and on May 14<sup>th</sup>, 2025, initiated a process to consider code amendments. On June 11<sup>th</sup>, 2025, the Board held a hearing to consider amendments to clarify existing code provisions related to BESSs in the Marion County Urban and Rural Zone Codes (MCC) chapters 16 and 17.

The Marion County Board of Commissioners signed Ordinance 1480 on July 9<sup>th</sup>, 2025, in order to add clarifying sections of text in chapters 16 and 17 of the MCC that outright prohibit BESSs. These sections of code were added for clarification only, because BESSs were not permitted under any section of code prior to July 9<sup>th</sup>, 2025.

The applicant was made aware of the County's determination but still chose to apply for an administrative review to construct a BESS under the erroneous classification of a utility facility necessary for public service. There is no way to approve a BESS in Marion County and therefore the application must be denied.

8. While a BESS is not a utility facility necessary for public service, the applicant's statements regarding the approval criteria for a utility facility necessary for public service are addressed below:

*MCC 17.137.040(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 did not provide any evidence to suggest that the proposed location is related to the technical or engineering feasibility of the proposal beyond being adjacent to a substation. The applicant references options for varying design of the facility in other sections of this application that suggest the project has not been

planned in detail. Without actual plans for construction of the BESS, there can be no conclusion about the technical and/or engineering feasibility of the proposal on any lands, let alone an proposed requirement to site the facility on high value farmland in the EFU zone. As addressed below, the applicant mentions risk of fire but does not address in detail how that risk will be mitigated. The risk of fire itself carries a cascading list of associated environmental and health impacts. As a result of a lithium fire there would be release of toxic chemicals into the air, soil and water, potential injury to first responders and citizens in the area such as respiratory issues, skin irritation, and long-term health issues. Beyond the safety issues are the environmental dangers posed by mass release of chemicals in the event of a failure of any of the batteries on site. The applicant does not address any of the technical details of these potential risks or how those risks could be mitigated. The applicant does not provide any evidence towards the feasibility of the proposed BESS to be engineered so as to mitigate the dangers inherent with BESSs. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

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;*

The applicant suggests that other substations in the area would not meet the technical and engineering feasibility criterion because they would require upgrades to the networks, capacity, or new long transmission lines. The applicant states that other locations were not suitable specifically due to requiring new overhead transmission line installation for compatibility. The applicant did not provide any evidence to support the assertion that they examined other locations in the county for compatibility with the project. The location proposed poses dangers to surrounding farmland due to soil contamination, groundwater contamination, and chemical leakage. The applicant did not provide any information about potential emergency response at the proposed location. The applicant specifically proposes an intensive use on EFU land in a rural area instead of in an urban area adjacent to one of many substations within cities in Marion County where such a use would be potentially more appropriate from an environmental and emergency response standpoint. The applicant suggests prolonging the life of the facility beyond the average 20-25 years for a BESS by frequent replacement of parts. Decommissioning requires collection of hazardous materials, and the applicant does not explain how decommissioning of the facility could be performed. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

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

The applicant states that there are no other lands “in proximity to the Parrish Gap Substation”. A BESS requires a substation, but not the Parrish Gap Substation specifically. The map of substations submitted by FOMC shows that there are many substations in Marion County on urban and nonresource lands. The applicant did not provide information to suggest that other potential siting locations on urban or nonresource lands were considered for the proposed BESS. Evidence on the record does not support the assertion that the proposed location is due to the lack of available urban and nonresource lands. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

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

The proposal is for a facility that would not be appropriate to cite within a right-of-way. The proposed BESS is not a utility facility necessary for public service, but if it was, this criterion would not apply.

5. *Public health and safety; and*

The applicant states they will comply with all local building and fire codes and that the facility does not produce any emissions or discharges. The applicant states that appropriate signage will be placed on the high voltage substation equipment. The applicant states that BESS Staff will be trained in fire prevention and fire department notification policies, furthermore staff will be required to follow those policies. The applicant does not describe the number of staff present, what hours they will be present, or what their non-emergency responsibilities will be. The applicant does not explain what the policies or procedures for these staff will be. The staff for BESSs after initial construction are generally only on site for routine inspections and maintenance, not around the clock supervision of the system.

The applicant states that prior to construction they will consult with relevant first responders to ensure there are suitable procedures in place in the event of a fire or other emergency, and the resources to provide training and demonstrations relevant to handling a fire or other emergency at the BESS facility. There is no indication that the applicant consulted with the Turner Fire District prior to applying to discuss the proposal and what may be required by the fire department. The applicant did not provide explanation of what these procedures

would be, nor if they have existing training resources. The applicant does not explain what specialized equipment for fighting battery fires at a BESS may be necessary. No emergency response plan was provided with the application.

Under the "Fire Safety" section of the application, the applicant states that there will be fire extinguishers at strategic locations throughout the 15-acre Battery Energy Storage System. Electrical Energy Storage Systems are subject to Oregon Fire Code (OFC 2022) section 1207, the applicant did not provide evidence that the proposal could or would comply with the requirements of that section.

The Marion County Board of Commissioners has determined that BESSs are not accounted for within Marion County Code and are therefore not permitted under any circumstances. The Board simultaneously directed Planning Department staff to begin working with industry leaders to develop standards for BESS so that they may be permitted in the future subject to standards that mitigate potential adverse impacts. The applicant was informed of this process and chose to apply prior to the development of any standards. The applicant has not provided significant evidence to suggest that their proposal will not impact public health or create a significant safety hazard within the county. The applicant had access to the public record of concerns discussed at the public hearing regarding BESSs. These concerns include significant inherent risks and potential impacts that result from establishment of a BESS.

Perhaps the most serious risk is the potential for thermal runaway resulting in lithium fires and explosions of the batteries themselves. These kinds of fires are extremely dangerous and difficult to extinguish. They can result in injury to first responders both in the short term due to unpredictable velocity of fluctuating temperatures when responders enter the facility, and in the long term due to health issues resulting from the release of toxic aerial chemicals that may cause respiratory issues and skin damage.

After a BESS fire is extinguished, there is still significant long-term risk to the health of people living in the area, and environmental hazards. The chemicals required for fire suppression of a large scale lithium fire can runoff into the surrounding soils, groundwater, and streams across the subject parcel. The chemical leakage of the damaged batteries themselves can result in hazardous material soaking into the soil and groundwater. At this location, due to the intermittent and perennial streams that flow through the proposed facility, this chemical leakage could directly pollute water bodies. Those streams flow into canals utilized by Santiam Water Control District to provide water to farms in the area.

Contamination of the groundwater and the streams on the subject parcel may result in a loss of water supply required by farmers in the area to successfully grow crops, and the groundwater supply depended upon for drinking water. Consumption of heavy metals and harmful materials that may leak from the BESS into the water supply could cause long term health issues for individuals living in the area.

During the eventual decommissioning of the facility in 20 to 25 years, there will be more risk of hazardous materials being released from metal in the batteries and chemical leakage into the soil, groundwater, and adjacent streams. If failing batteries are removed, these hazards will simply be moved to a different site. The applicant did not explain a plan for disposal of the batteries.

The risks to the residents, farming operations, and environment in the immediate area are significant. These risks carry associated costs for cleanup in the cases of fire, explosion, failing/leaking batteries, and eventual decommissioning. In the case of an emergency at the BESS, several forms costly damage on the surrounding area may be incurred. Crops may be destroyed. The soil may require capping if significantly contaminated. Farmland may be permanently lost. Water sources may be contaminated. The ecosystem may be permanently degraded. All of these potential side effects could create significant financial burden on property owners in the area. The applicant did not address any of these risks, or suggest how Remington BESS LLC could or would pay for any of the damages to property owners and residents that may result from the dangers of their proposed BESS.

In the case of an emergency at the BESS, temporary evacuation of nearby residents may be required. Neighbors would need somewhere to evacuate to, whether that be a temporary shelter or hotels in the area. An appropriate plan would provide details in the event of an evacuation and give property owners the chance to review and provide comments on the plan during the land use process. The applicant did not provide any evacuation plan.

The public health and safety concerns regarding BESSs are significant and the potential adverse impacts to agriculture and the environment resulting from BESSs are equally significant. The necessity for mitigation of the risks imposed by these facilities is one reason the county is prohibiting BESSs until specific standards can be developed. The applicant did not provide any significant evidence that the proposed BESS could create

significant hazards to public health and safety. If it were possible to approve this application, it would circumvent the standards that may be implemented by the county to ensure the safe development of BESSs in the future. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

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.*

The applicant states that cost was only one of the factors analyzed when selecting this location. The applicant did not provide analysis of any other factors. The evidence on the record suggests that cost is the sole deciding factor when selecting this location. This location has existing overhead transmission lines. The applicant states that they analyzed other locations near substations in the surrounding area, but all those stations would require upgrades such as installation of overhead transmission lines. The upgrades to a location are costs associated with that location. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

- 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. They did not provide any plan for decommissioning and restoration, and furthermore have not provided any evidence that it is possible to restore the project site to agricultural use after developing it with a BESS. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

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

MCC 17.136.060(A)(1) contains the criteria for the farm impacts test in the EFU zone. The farm impacts test has been recently updated by the Department of Land Conservation and Development to accurately represent case law.

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.*

*For purposes of this section, a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:*

- A. *Identification and description of the surrounding lands, the farm and forest operations on those lands and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;*  
B. *An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and*  
C. *An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.*  
D. *For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*

*E. For purposes of this section, potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under this section.*

*F. In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in this section.*

The applicant addressed the farm impacts test by stating that the project will not result in any discharges or emissions to the environment, and that they are committed to environmentally responsible development. The applicant went on the state that if the county requires them to determine environmental monitoring and mitigation plans, then they would be willing to do so sometime in the future. The applicant provided no information about how the environmental monitoring could be conducted or what mitigation plans would entail. The applicant provided no detailed information about the environmental impacts of covering 15 acres with lithium batteries.

The applicant did not provide a detailed description of the surrounding lands or agricultural activities. The applicant did not provide any information about how the BESS might impact the surrounding agricultural activities. The limited evidence on the record does not support the claim that the project will neither result in change in, or significantly increase the cost of, farm activities in the area. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not pass the farm impacts test as required by this criterion.

*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.*

*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.*

*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.*

No sewer system is proposed. The proposed facility is not a natural gas pipeline or transmission line. The proposed BESS is not a utility facility necessary for public service, but if it was, the above criteria d, e, & f would not apply.

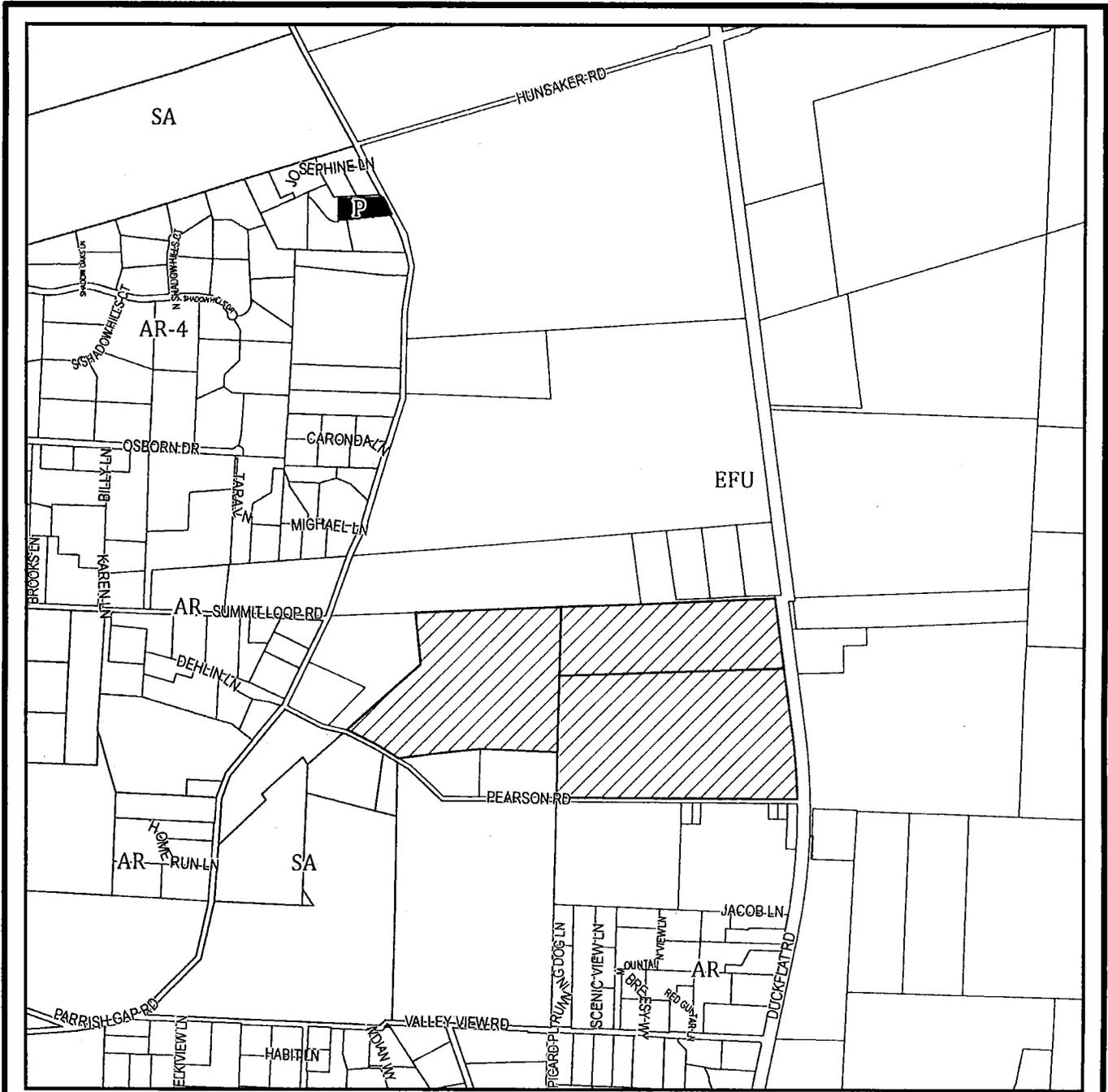
18. Battery Energy Storage Systems are not an identified use in any zone in Marion County Code. The applicant applied for this BESS as if it were a utility facility necessary for public service, but BESSs are not utility facilities necessary for public service. If a BESS could be approved as a utility facility necessary for public service, this proposal would be unable to satisfy the applicable criteria. The application is **DENIED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: August 1<sup>st</sup>, 2025

If you have any questions regarding this decision contact John Speckman 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.



# ZONING MAP

Input Taxlot(s): 092W20D000100, 092W21C000100, 092W21C000200

**Owner Name:** NEILS PAUL & IRMA L JENSEN JRT  
JENSEN, NEILS PAUL TRE

**Situs Address:** 5927 PEARSON RD SE  
**City/State/Zip:** TURNER, OR, 97392  
**Land Use Zone:** EFU  
**School District:** CASCADE  
**Fire District:** TURNER

<p><b>Legend</b></p> <p> Input Taxlots</p> <p> Lakes &amp; Rivers</p> <p> Highways</p> <p> Cities</p>		
<p>N</p> <p>scale: 1 in = 1,303 ft</p>	<p><b>DISCLAIMER:</b> This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.</p>	

**From:** [John Speckman](#)  
**To:** [Hodges, Whitney](#); [Thompson, Alexandra](#); [Thomas, Ryan C. \(BEL\)](#)  
**Cc:** [Gispert, Cristina](#); [Bilodeau, Monica](#)  
**Subject:** RE: AR25-015/ Remington BESS appeal  
**Date:** Tuesday, October 7, 2025 3:48:42 PM  
**Attachments:** [image001.png](#)  
[60-Day EXT AR25-015.pdf](#)

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Hey Whitney,

I just about to call Ryan about this because there are a few issues with this plan.

The first is that November 13<sup>th</sup> is not available for our Hearings Officer. She is an attorney with her own private practice so we have to work around not only other land use hearings, but also any trials she's working for her own practice. I just heard back from her about 20 minutes ago, and she indicated availability prior to the 13<sup>th</sup> but not anything beyond it. After I send you this, I'll send her an email asking about what Thursdays after the 13<sup>th</sup> are looking like.

Ryan indicated you would be willing to sign a 60-day extension, which is the absolute minimum we would accept, 90-days would be much more preferable. We're entering holiday season and it's unlikely we can schedule the BOC hearing on this before mid-January as it is. We would like the extension on our own form, and the standard practice is to have it signed by someone involved in the application like Ryan, Alexandra, the property owners, or yourself. If it's convenient to route this all the way to your VP that's cool, but not necessary. I've attached a 60-day incase you want to move forward with postponing the hearing.

Final issue is the timeframe we're working with. We need to know that this hearing is cancelled by the end of tomorrow so we can prepare cancellation notices to mail out. It is very likely that I will not be able to guarantee a new hearing date by tomorrow, it's quite possible we get pushed into December, and if that happens I will have to bug you for additional extensions.

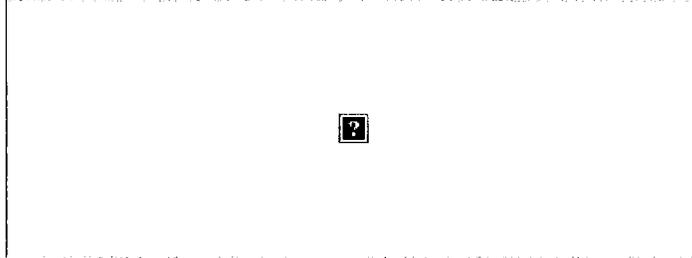
If you are okay with a 60-day instead of a 30 (I will pretend you didn't sent that last one), and okay with the uncertainty of when the hearing will be, and the potential for it to be more than a month away, and can confirm all of that by tomorrow, then we're good to postpone this thing. If the answer is no on any of those, then we need to stay with the 15<sup>th</sup>.

I want to reiterate an argument against postponing that I relayed to Ryan, perhaps more clearly here. With all due respect for you guys, there is no path to approval here and any preparation afforded by postponing the hearing won't change that. The BOC is going to affirm their own interpretation that BESS are not in our code and are not allowed in any zone in Marion County. The HO will affirm the staff decision because it is correct. This process we are engaged in leads to an appeal of the County decision to the state land use board of appeals (LUBA). If you guys are concerned about time, I would encourage you to go ahead with the hearing on the 15<sup>th</sup> to expedite the journey towards LUBA. LUBA can then be appealed to the Court of Appeals, and so

on and so forth.

Please feel free to call if you'd like to talk about this more, I'll be here late today.

Talk to you soon,



**From:** Hodges, Whitney <Whitney.Hodges@rwe.com>

**Sent:** Tuesday, October 7, 2025 2:41 PM

**To:** John Speckman <JSpeckman@co.marion.or.us>; Thompson, Alexandra <Alexandra.Thompson@rwe.com>; rthomas@perkinscoie.com

**Cc:** Gispert, Cristina <Cristina.Gispert@rwe.com>; Bilodeau, Monica <Monica.Bilodeau@rwe.com>

**Subject:** Re: AR25-015/ Remington BESS appeal

**⚠ WARNING:** This email originated outside of Marion County.  
**DO NOT CLICK** links or attachments unless you trust the sender and know the content is safe.

-NOT ENCRYPTED-

Good Afternoon John,

Following up on the voicemail from Ryan Thomas, attached please find the Second Extension Agreement that postpones the Hearings Officer hearing on the Remington appeal until no earlier than November 13<sup>th</sup> and extends the County's final decision deadline to February 25, 2026 (for a total of 60 days beyond the statutory deadline).

Please confirm receipt of this agreement and confirmation of the redocketed Hearings Officer hearing.

Thank you for your consideration of this request!

Best,  
Whitney

**Whitney Hodges**  
**Assistant General Counsel, Real Estate and Permitting Law**  
**RWE Clean Energy**

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**From:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>  
**Sent:** Wednesday, October 1, 2025 4:38 PM  
**To:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com) <[rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)>  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** Re: AR25-015/ Remington BESS appeal

-NOT ENCRYPTED-

Good Afternoon John,

Oh, Iceland!! I am jealous. I hope you enjoyed your (extended) trip.

Thank you for the confirmation! Please let us know if this changes for any reason.

Best,  
Whitney

**Whitney Hodges**  
**Assistant General Counsel, Real Estate and Permitting Law**  
**RWE Clean Energy**

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**From:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>  
**Sent:** Monday, September 29, 2025 9:50 AM  
**To:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com) <[rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)>  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** [EXT] RE: AR25-015/ Remington BESS appeal

Good Morning Whitney,

Thank you! I ended up getting stuck in Reykjavik for a day on the way back (which I'm not complaining about) so this is my first day back.

The Hearings Office hearing on October 16<sup>th</sup> is still on the books. If you have any questions about the process or just want to talk about it, let me know.

I hope you've had a good rest of your September,



**From:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>  
**Sent:** Thursday, September 25, 2025 8:00 AM  
**To:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** Re: AR25-015/ Remington BESS appeal

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Good Morning,

I hope you had a great time out of the office!

Bringing this to the top of your inbox. Is the Remington appeal still docketed for the October 16<sup>th</sup> Hearings Office agenda?

Best,  
Whit

**Whitney Hodges**  
**Assistant General Counsel, Real Estate and Permitting Law**  
**RWE Clean Energy**

---

**From:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>  
**Sent:** Thursday, September 11, 2025 12:26 PM  
**To:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com) <[rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)>  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** Re: AR25-015/ Remington BESS appeal

Good Afternoon John,

I hope you have been well!

I wanted to check in on the Remington BESS application appeal. Are we still trending towards an October 16<sup>th</sup> hearing date?

Best,  
Whitney

**Whitney Hodges**  
**Assistant General Counsel, Real Estate and Permitting Law**  
**RWE Clean Energy**

---

**From:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>  
**Sent:** Thursday, August 21, 2025 4:15 PM  
**To:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com) <[rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)>  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** Re: AR25-015/ Remington BESS appeal

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Good Afternoon John,

Pete Solomon is the Vice President of Utility Scale Development, West for RWE Clean Energy, LLC - the parent company for the project applicant (Remington BESS, LLC). He is authorized to sign on behalf of this particular RWE subsidiary.

Best,  
Whitney

**Whitney Hodges**  
**Assistant General Counsel, Real Estate and Permitting Law**  
**RWE Clean Energy**

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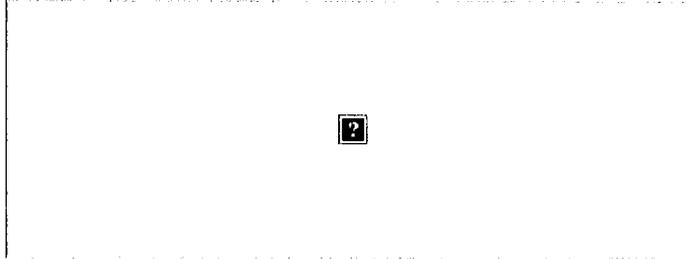
**From:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>  
**Sent:** Thursday, August 21, 2025 2:45 PM  
**To:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com) <[rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)>  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** [EXT] RE: AR25-015/ Remington BESS appeal

Hey Whitney,

What is Pete Solomon's relation to Remington BESS, LLC?

All of our public hearings are in person.

Have a good afternoon,



**From:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>

**Sent:** Thursday, August 21, 2025 11:30 AM

**To:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)

**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>

**Subject:** Re: AR25-015/ Remington BESS appeal

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Good Morning,

Thank you for this explanation, John!

In conferring with the project team, we believe a 30-day extension is a reasonable request and in line with County precedent. As such, attached please find the executed Extension Agreement, revised to reflect a 30-day extension. This would put the deadline for a final decision to January 26, 2026 and avoid the holiday crunch. If a further extension is required, we can address the need and justification at that time.

Also, I can confirm that the project team is available for the HO hearing on October 16, 2025. I assume this will be in person, but can you please confirm?

Thank you!

Best,  
Whitney

**Whitney Hodges**  
**Assistant General Counsel, Real Estate and Permitting Law**  
**RWE Clean Energy**

---

**From:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>  
**Sent:** Wednesday, August 20, 2025 11:14 AM  
**To:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com) <[rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)>  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** [EXT] RE: AR25-015/ Remington BESS appeal

Good morning Whitney,

The 150 started 30 days after application received date so July 30<sup>th</sup>. The current expiration date is December 27<sup>th</sup>, which means we would not have enough time for a BOC hearing. I've attached the excel sheet we use to keep track of the timeline, filled out with the HO hearing date of October 16<sup>th</sup>. The 9<sup>th</sup> is booked but the 16<sup>th</sup> looks good. There will be a zone change hearing that afternoon as well but neither of these should take very long.

Have a good Wednesday,



**From:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>  
**Sent:** Tuesday, August 19, 2025 5:52 PM  
**To:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** Re: AR25-015/ Remington BESS appeal

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Good Afternoon John,

Thank you for the speedy response!

Just one more question to make sure I am crystal clear on this before signing the extension.

- Can you please confirm when the 150-day clock commenced? Specifically, was it August 1<sup>st</sup> when the denial was issued? Or 30 days after we submitted our application on July 29<sup>th</sup>?

Please note, October 2, 9, or 16 work for the RWE team. Please let us know when we are docketed so that we can make arrangements and ensure our packet to the Hearing Officer is ready.

Best,  
Whitney

**Whitney Hodges**  
**Assistant General Counsel, Real Estate and Permitting Law**  
**RWE Clean Energy**

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**From:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>  
**Sent:** Tuesday, August 19, 2025 7:01 PM  
**To:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com) <[rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)>  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** [EXT] RE: AR25-015/ Remington BESS appeal

Hey Whitney,

We have a state mandated timeframe of 150-days to issue a decision outside of UGBs, the extension would add 60-days. We ask for one if a decision is appealed, another if more time is requested to provide supplementary information, another if there are scheduling conflicts, etc. We will ask for another 60 if you guys appeal the HO decision that to the BOC. It's a formality that you could chose to refuse, but nobody does because there's no real benefit. The constraints on our decision making at this point is only relative to scheduling. The HO almost always issues her decisions 3 weeks from end of hearing or open record period. That hearing's going to be early October, if you guys are available one of those Thursdays (9<sup>th</sup> or 16<sup>th</sup> ideally).

Have a good evening,



**From:** Hodges, Whitney <[Whitney.Hodges@rwe.com](mailto:Whitney.Hodges@rwe.com)>  
**Sent:** Tuesday, August 19, 2025 2:09 PM  
**To:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>; Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)  
**Cc:** Gispert, Cristina <[Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)>; Bilodeau, Monica <[Monica.Bilodeau@rwe.com](mailto:Monica.Bilodeau@rwe.com)>  
**Subject:** Re: AR25-015/ Remington BESS appeal

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Good Afternoon John,

On behalf of RWE, I am confirming receipt of the below. Apologies for being a bit dense, but - as we consider the request for an extension - would you mind clarifying what date the request is looking to extend. Is this a 60-day extension when 150-day deadline when the final order is due? If so, is there a concern that the Hearing Officer will not be able to issue a decision by then? If this is the case, would it be possible to keep the current deadline until the Hearing Officer opines he/she needs more time and requests an extension? Again, apologies for these very basic questions, and appreciate any clarity or confirmation you can provide.

Best,  
Whitney

**Whitney Hodges**  
**Assistant General Counsel, Real Estate and Permitting Law**  
**RWE Clean Energy**

---

**From:** John Speckman <[JSpeckman@co.marion.or.us](mailto:JSpeckman@co.marion.or.us)>  
**Sent:** Monday, August 18, 2025 6:27 PM  
**To:** Thompson, Alexandra <[Alexandra.Thompson@rwe.com](mailto:Alexandra.Thompson@rwe.com)>; [rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)  
<[rthomas@perkinscoie.com](mailto:rthomas@perkinscoie.com)>

**Subject:** [EXT] AR25-015/ Remington BESS appeal

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**\*\* EXTERNER ABSENDER \*\***:  
**Klicken Sie nicht auf Links, öffnen Sie keine Anhänge und geben Sie Ihre ID/Ihr Kennwort** nur dann ein, wenn Sie den Absender erkennen und sicher sind, dass der Inhalt sicher ist. **Wenn Ihnen etwas verdächtig vorkommt, melden Sie es.** Beachten Sie Folgendes, bevor Sie Maßnahmen ergreifen: Hatten Sie diese E-Mail erwartet? Können Sie den Absender verifizieren? Sind Grammatik und Rechtschreibung korrekt? Ergibt der Inhalt oder die Aufforderung einen Sinn?

Hey guys,

We received the appeal of the staff decision last week and I just wanted to reach out for a preliminary extension, and see about potential hearing dates.

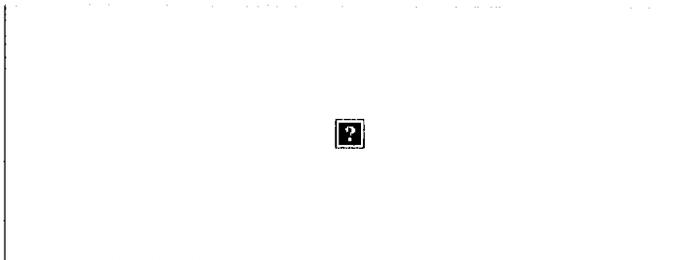
The name on the appeal is Steve Pfeiffer, but I called Steve and he explained that you'll be taking the lead on this Ryan. I'm assuming you'll be working with Alexandra, and if there's anybody else on the team feel free to add them on here.

The appeal noted that no letter of completeness was issued. This is correct, we opt to review materials at the time of submission. Our decisions are usually issued within 30 days, but this one took a little longer. Our standard approach is to request an extension at the time of appeal. I've attached a 60-day extension request to this email.

Steve indicated that you guys were going to submit additional information about the reason for your appeal. If you want to submit an early supplement for the HO to review you can, if you want to submit it last minute or at the hearing, you can do that too. Our Hearings Officer generally gets decisions out in 3-weeks. If the record gets left open after the hearing, that three weeks starts at the end of the open record period.

Our Hearings Officer schedules land use hearings at 2pm on Thursdays. Right now we're looking at early October for availability. Do you guys have preferences about any Thursdays in early October?

Talk to you soon,



**BEFORE THE MARION COUNTY HEARINGS OFFICER**

In the Matter of the Application of	)	Case No. 25-015
Remington BESS LLC, on behalf of the	)	
Neils Paul Jensen and Imma L. Jensen Joint	)	<b>ADMINISTRATIVE REVIEW</b>
Revocable Trust.	)	

**ORDER**

**I. Nature of the Application**

This matter came before the Marion County Hearings Officer on the Application of Remington BESS, LLC, on behalf of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust for an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200).

**II. Relevant Criteria**

The standards and criteria relevant to this Application are found in Oregon Revised Statutes, and the Marion County Code (MCC), Title 17, especially MCC 17.136 (Exclusive Use Zone).

**III. Hearing**

A public hearing was held on this matter on November 6, 2025. At the hearing, the Planning Division file was made a part of the record. The record includes the following Pre-Hearing submissions and additional material:

1. Remington BESS, LLC Pre-Hearing Brief with Alternatives Analysis Appendix and Exhibits 1-22 (Received October 31, 2025)
2. Remington BESS, LLC BESS Mitigation (Received November 3, 2025)
3. Testimony from John J. Audley in Support of Application to Site a Battery Energy Storage System in Marion County (Received November 5, 2025)
4. Santiam Water Control District Comments (Received November 5, 2025)

The following persons appeared and provided testimony:

- |    |                   |                                 |
|----|-------------------|---------------------------------|
| 1. | John Speckman     | Marion County Planning Division |
| 2. | Ryan Thomas       | Attorney for Applicant          |
| 3. | Christina Gispert | Applicant Representative        |
| 4. | Brent Stevenson   | Santiam Water Control District  |

No objections were raised to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing. No documents were entered into the record as exhibits.

The record was held open to allow the parties to provide supplemental comments. The following submissions were received:

November 13, 2025: Santiam Water Control District Supplemental Comments to Remington BESS Administrative Review 25-015

November 20, 2025: Applicant's Response to Santiam Water Control District Comments on BESS Project submitted by Ryan Thomas

#### **IV. Executive Summary**

Applicant requests an administrative review to place a battery energy storage system ("BESS") on Exclusive Farm Use ("EFU") zoned land as a utility facility necessary for public service (the "Project").

The Planning Director denied the application, and Remington BESS, LLC appealed on the basis that (1) a battery energy storage system is a utility facility necessary for public service, and (2) Remington BESS, LLC complied with ORS 215.275 in demonstrating it considered reasonable alternatives to siting the project in the EFU zone. Remington BESS, LLC also argues that to the extent the denial was predicated upon Marion County Ordinance 1480, which bans BESS in all County zone designations, Ordinance 1480 is invalid on its face and does not apply to the current application because the application was submitted prior to the adoption of Ordinance 1480.

Evidence submitted by Applicant, including expert testimony, establishes that electrical utilities incorporated the use of energy storage systems, including BESS, into their integrated resource and clean energy planning. The Project would provide battery energy storage services to the PacifiCorp's electrical grid. The evidence suggests that BESS may be beneficial, efficient, and may advance important energy objectives, including clean power and meeting renewable energy targets.

The term "utility facility," as used in ORS 215.283(1)(c) and MCC 17.110.584 refers to infrastructure that directly delivers a utility service to the public. The proposed BESS functions solely as energy storage. The proposed BESS would interact with the electric grid, but support of a utility system is not the equivalent of providing a utility service. PacifiCorp will continue to provide service without the proposed BESS.

Under ORS 215.283(1)(c), ORS 215.275, and MCC 17.110.584, benefit, efficiency, or contribution to broader policy goals does not establish necessity. Because a privately owned BESS does not deliver electric service and does not require EFU siting to function, it does not meet the legal standard, even if it provides ancillary or system-wide benefits.

The application for an administrative review to construct a battery energy storage system as a utility facility necessary for public service is DENIED.

### **V. Findings of Fact**

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Exclusive Farm Use (EFU) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the northern side of Pearson Rd SE within a half mile of the intersection with Parrish Gap Rd SE. The proposed area for the Battery Energy Storage System (BESS) is the approximately 15 acres north of the PacifiCorp Parrish Gap Substation which is located on Pearson Rd SE, east-adjacent to the property at 5387 Pearson. The proposed area is in agricultural use for either grass seed or hay production with the rest of the 133.77-acre parcel. There are two mapped perennial streams and one mapped intermittent stream across the subject parcel. Based on the site plan, the BESS would be sited upon the southernmost perennial stream and the intermittent stream, as well as being nearly adjacent to the northern perennial stream. All three of these flow into canals managed by the Santiam Water Control District for the purpose of providing water rights to farmers in the district.

The subject property was itself the subject of a property line adjustment in 2008 (PLA08-044) which clarifies that the 46.35-acre tax lot upon which the BESS is proposed is itself part of a larger 133.77-acre parcel consisting of three tax lots (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200). The property line adjustment was between two parcels, and yielded a 5-acre parcel which contains the homesite at 5387 Pearson Rd SE (not involved in this application) and the 133.77-acre parcel upon which the 15-acre BESS is proposed by this application. While the subject parcel consists of three tax lots, it appears by all indications that PLA08-044 was completed and therefore the subject parcel is legal for land use purposes.

3. Surrounding uses are agricultural and residential. Lands north and east of the subject parcel are in the EFU zone and devoted to large scale agriculture, particularly of grass seed and hay. Lands directly to the south are in the SA (Special Agriculture) zone and in use for agriculture and rural homesites. On the other side of those SA zoned lands is a relatively dense neighborhood of AR (Acreage Residential) zoned parcels. To the west of the subject parcel is another parcel in agricultural use in conjunction with the subject parcel, and a parcel in rural residential use. Those parcels are bordered by Parrish Gap Rd SE, and west of Parrish Gap is the southeastern corner of a large (approximately 375-acre) AR zoned area devoted to rural residences and hobby farms.

The lands to the north and east, devoted to agricultural purposes, are mostly devoid of trees, and east of Duckflat Rd SE is a significant area of wetlands (both natural and manmade). The lands to the west and south of the subject parcel, and specifically south of Pearson Rd and West of Parrish Gap, are relatively densely developed and densely treed lands.

4. Applicant proposes to place a battery energy storage system (BESS) on a 15-acre area of the subject parcel to store electricity.
5. The subject parcel is comprised of approximately 63.5% high value soils. The proposed 15-acre project area is primarily sited upon class 2 Abiqua silty clay loam, class 2 McAlpin silty clay loam, and class 3 Waldo silty clay loam.
6. Various agencies were contacted with the proposal and given an opportunity to comment.

Marion County Building Department commented: “No Building Inspection concerns. Structural permit is not required as the energy storage facility is for utility purposes and not subject to the requirements of the 2022 OSSC. Separate electrical permit(s) is required to be obtained prior to development.”

Marion County Land Development, Engineering and Permits requested the following be included:

#### **ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required. In order to achieve maximum intersection sight distance, the access approach shall be situated as close to directly opposing the driveway serving #5288 Pearson Rd, as feasible, based upon preliminary field observation.
- B. Stormwater detention may be required upon 0.5-acres or more of development.
- C. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits.
- D. Utility work in the public right-of-way, such as electrical Point of Interconnection (POI) serving the facility, requires a separate PW Engineering permit.

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

Friends of Marion County provided comments on the proposal and specifically requested denial because a BESS is not a utility facility, is not necessary for public service, is not a commercial power generation facility, and because appropriate conditions have not been developed. The full comments from FOMC are found in the case file. FOMC also submitted six exhibits:

- (1) Tax assessor information for Tax Account No. 535412
- (2) 2025-2025 Property Tax Account No. 535412,
- (3) The applicant's site plan
- (4) A map of PGE substations located in Marion County,
- (5) EFSC Meeting May 2, 2025 Agenda Item C Overview of Battery Energy Storage Systems
- (6) The agenda review form for the June 11, 2025 Marion County Board of Commissioners session to discuss BESS, including a memo with proposed new code language that was subsequently adopted on July 9, 2025

The FOMC exhibits are found in full in the case file.

Oregon Department of Fish and Wildlife commented: "Prior to site development (grading, vegetation management), the applicant should complete grassland bird surveys. Disturbance to nesting grassland birds should be minimized by limiting these actions so that they occur outside of the breeding season (April 1 – July 15)."

Santiam Water Control District (SWCD) commented with concerns regarding adverse impacts on water quality from construction stormwater, adverse impacts on water quality from increased impervious surfaces, adverse impacts on water quality due to pollutants from the BESS operation, and adverse impacts on farm use. SWCD explains that the area proposed for the BESS has water rights that will need to be transferred. The property has a water pump that will be oversized for the reduced water right and without modification would dispense an illegal amount of water after the forfeiture of the existing water right. Therefore, SWCD will require an SWCD-approved method of measuring water use on the property.

SWCD suggested conditions of approval if the county were to approve the proposal. SWCD's proposed conditions of approval, as stated by Planning, are as follows:

- A. The applicant shall construct on-site stormwater detention facilities sufficient for a 50-year storm event.
- B. The applicant shall enter into a consent agreement with SWCD.
- C. The applicant shall provide environmental planning for review by the County and SWCD to ensure that no pollution from the proposed BESS enters the drainage ditch and/or SWCD facilities.
- D. The landowner shall deed its interest in the SWCD Water back to SWCD.
- E. The property owner shall amend its SWCD water delivery contract to exclude the 15-acres.

- F. The property owner shall install an SWCD-approved method of measuring water use on the property.

The entire comment submitted by SWCD is included in the case file.

Turner Fire District has reviewed this project and has the following comments.

1. Fire service features including fire apparatus access and fire protection water supplies are required to comply with the 2022 Oregon Fire Code (OFC). In order to assist applicants, design professionals, and developers, fire agencies throughout Marion County have provided the 2024 Marion County Fire Code Applications Guide (MCFCAG). The following links to the OFC and the MCFCAG are provided as follows.
  - a. The 2022 Oregon Fire Code contains the currently adopted fire and life safety regulations for the State of Oregon. The full text of the OFC is available through the International Code Council's website at the following link:  
<https://codes.iccsafe.org/content/ORFC2022P1>
  - b. The 2024 Marion County Fire Code Applications Guide contains guidelines established by the fire agencies throughout Marion County to assist designers and applicants with how OFC requirements are to be applied to their projects. The following link to the 2024 MCFCAG is provided on the Turner Fire District website: Click the "Public Information" link at the bottom of the main page. Click the "Rural Access Standards" link. This opens the MCFCAG document which is located at the following link:  
[https://www.turnerfire.com/content/files/M\\_C%20App%20Guide%207-2024\(3\).pdf](https://www.turnerfire.com/content/files/M_C%20App%20Guide%207-2024(3).pdf)
2. OFC 505 Address identification signs shall be provided.
3. OFC 506 Key box(s) is/are to be installed in an approved location where access to or within a structure or an area is necessary for lifesaving or fire-fighting purposes when required by the fire code official. NOTE: TFD does not require key boxes. However, *if occupants choose* to secure property, facilities, structures, or areas in such a manner which will inhibit immediate fire access, key boxes if installed, shall be of a design approved by Turner Fire District.
4. OFC 509 Fire protection equipment, gas shutoff valves, electric meters, service switches, and other utility equipment shall be clearly identified, readily visible, and legibly marked in an approved manner. Rooms containing controls shall be identified for the use of the fire department. Signs shall be constructed of durable materials, permanently installed, and maintained.
5. OFC 1207 Electrical energy storage systems (ESS) shall be in accordance with OFC Chapter 12 and specifically section 1207.

All other agencies either declined to comment or stated no objection to the proposal.

7. On April 15, 2025, the Marion County Board of Commissioners held a work session to discuss Battery Energy Storage Systems (BESS). BESS are not expressly contemplated in county zoning code, state statute or state administrative rule. The Marion County Board of Commissioners determined that a BESS is not a “Utility Facility Necessary for Public Service” as found in MCC 17.137.040(I), and that furthermore there is no use identified in the Marion County Code under which a BESS could be considered.

The Board of Commissioners determined to clarify the applicability of existing code to allow BESS. On May 14, 2025, the Board initiated a process to consider code amendments. On June 11, 2025, the Board held a hearing to consider amendments to clarify existing code provisions related to BESS in the Marion County Urban and Rural Zone Codes (MCC) Chapters 16 and 17.

The Marion County Board of Commissioners signed Ordinance 1480 on July 9, 2025. The Board sought to add clarifying sections of text in Chapters 16 and 17 of the Marion County Code to specifically prohibit BESS in Marion County. The Board indicated that the sections of code prohibiting BESS were added for clarification only because BESS were not permitted under any section of code prior to July 9, 2025.

8. Applicant filed its application for Administrative Review pursuant to MCC 17.136.040 which allows for the certain uses in the EFU zone subject to approval based on satisfaction of the standards and criteria specified for each use pursuant to MCC 17.115. MCC 17.136.040(I), subject to specific criteria, allows for the use of 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.
9. Applicant’s proposed project is the construction and operation of the Remington Battery Energy Storage System (BESS) to be situated on approximately 15 acres of private property, located approximately 8 miles southeast of Salem. The Project would consist of battery containers, transformers, inverters, transmission lines, access roads, fencing, and associated infrastructure. The Project is intended to deliver electricity to the PacifiCorp transmission system via existing transmission infrastructure and associated utility easements and would interconnect to the existing Parrish Gap Substation immediately to the south of the proposed Project area.

Applicant states that states that Battery Energy Storage Systems (BESS) are a necessary and essential part of Oregon’s energy infrastructure and future. Oregon House Bill 2021 sets renewable energy targets, and to meet the targets, the Oregon legislature and the Oregon Department of Energy require the integration and development of BESS. Electric utilities, like PacifiCorp and Portland General Electric, have cited the need for

additional storage sources in their clean energy and integrated resource planning. BESS collect electric energy generated from energy sources, including electrical grid, wind, solar, geothermal sources, and store the energy for a period of time in rechargeable batteries, and then release it back to the grid to provide electricity to residential and commercial users. (Applicant's Brief, Exhibits 6-10)

10. PacifiCorp's 2025 Integrated Resource Plan (IRP) and siting requests indicated a need for BESS. The 2025 Oregon Siting RFP, which was approved by Oregon's Public Utilities Commission and is the means by which PacifiCorp must procure resources described in the IRP, specifically calls for energy storage resources, including at least 509 megawatts of new 4-hour lithium-ion battery storage resources needed in PacifiCorp's Oregon service territory by the end of 2029. Applicant states that the BESS Project is designed to respond to this need by providing 199 megawatts of 4-hour duration storage and by coming online before December 2029. (Applicant's Brief, Exhibits 12-17, Appendix A).
11. Applicant posits that BESS are necessary for the operation of the modern grid and essential to achieving the state's renewable energy targets. Applicant argues that state laws and policies demonstrate that BESS are utility facilities necessary for public service.

#### **VI. Additional Findings of Fact and Conclusions of Law**

1. Applicants have the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests.

Applicant must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely Applicant have not met their burden, and the application must be denied. If the evidence for every criterion is in Applicant's favor, then the burden of proof is met.

2. Applicant argues that County Ordinance 1480 (the "Ordinance"), which bans BESS in all County zone designations, does not apply to the current application. Applicant argues that the Ordinance is void because it conflicts with the plain language set forth in ORS 215.283(1). Applicant also argues that the Ordinance was not in effect at the time the application was submitted and cannot be applied as a standard and criteria that were not in effect at the time the application was submitted.

3. Ordinance 1480 added MCC 16.01.050 which states: Notwithstanding any other provision in this code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale. MCC 16.01.050 prohibits BESS in Marion County.
4. Ordinance 1480 was adopted on July 9, 2025. Applicant's application was submitted on June 30, 2025. Because the application pre-dates the Ordinance, the Hearings Officer considers (1) whether a BESS is a utility facility under Marion County Code; (2) whether a BESS is a utility facility that is permissible in the Exclusive Farm Use zone under ORS 215.283(1)(c); and (3) whether the BESS meets the siting factors in ORS 215.275 and MCC 17.136.040(I).

MCC 17.110.584

5. MCC 17.110.584 defines "utility facility" as any water, gas, sanitary sewer, storm sewer, electricity, telephone and wire communication service, and CATV (cable television) service lines, mains, pumping stations, reservoirs, police underground transmission facilities, substations, and related physical facilities which do not include buildings regularly occupied by employees, parking areas, or vehicle, equipment and material storage areas, wireless communications facility or wireless communications facility attached.

MCC 17.110.584 defines a utility facility as physical infrastructure for an enumerated service, but does not expressly list Battery Energy Storage Systems (BESS). Therefore, to meet the definition, a BESS must fit by analogy or context as a "related physical facility" for electric service.

6. The proposed facility is a standalone Battery Energy Storage System (BESS) consisting of battery containers and associated equipment designed to store electrical energy and later discharge that energy to the electrical grid or market.

Remington BESS is a battery storage asset owned and developed by RWE, an energy company. The BESS Project is to provide energy storage services to the PacifiCorp electrical grid.

Applicant is a private company that is not a public utility, and does not provide electric service to the public. The code definition of "utility facility" presumes facilities that are part of a utility service system, such as electric transmission or distribution infrastructure operated by or on behalf of a utility serving the public. In this case, Applicant's Project is not owned or operated by an electric utility. Applicant is not subject to public utility regulation for retail electric service. The proposed BESS does not provide direct electric service to customers. Applicant participates in energy storage and market operations for renewable energy. The proposed BESS lacks the public service character inherent in the utilities enumerated in MCC 17.110.584.

7. While MCC 17.110.584 includes “related physical facilities,” this language must be interpreted in context with the enumerated examples, all of which involve utility service delivery infrastructure. A privately owned BESS that could operate independently of transmission or distribution facilities, is not required to be located at a specific site to serve utility customers, and exists primarily for energy management or market participation, is not sufficiently related to the listed utility facilities to fall within the definition of “related physical facilities.”
8. A BESS is not a utility facility necessary for public service as defined in MCC 17.110.584.

ORS 215.283(1)(c)

9. ORS 215.283(1)(c) provides that 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, may be established in the Exclusive Farm Use (EFU) zone. A utility facility necessary for public service may be established as provided in ORS 215.275.
10. The proposed BESS project is a stand-alone battery energy storage system designed to store electrical energy and discharge the energy to the electric grid. The evidence indicates that the supply to the electric grid is as needed, or as selected by the operator.
11. Applicant argues that Oregon courts have interpreted “utility facility” broadly. However the Oregon cases involved facilities that actually performed the service at issue, including power generation, transmission lines, communications facilities, and broadcasting towers. See, e.g. *Save our Rural Oregon v. Energy Facility Citing Council*, 339 Or 353, 121 P3d 1141 (2005) and *McCaw Communications, Inc. v. Marion County*, 96 Or App, 773 P2d 779 (1989).  
  
In *Cox v. Polk County*, 174 Or App 332, 25 P3d 970 (2001), the Court considered the term “utility facility” as used in ORS 215.283(1)(c) to mean equipment or apparatus, whether standing alone or as part of a structure, that functions to perform or provide, in whole or in part, a service such as the production, transmission, delivery or furnishing of electricity or natural gas, the purification of drinking water, or the treatment of solid or liquid waste. “The equipment comprising the facility need not be extensive or complex; in addition, the facility may include ancillary or off-site equipment such as transmission lines. *Id.* at 344. The Court specified that, at a minimum, the facility must include some equipment or apparatus that itself performs the relevant production, transmission or similar function or service.
12. Applicant’s characterizes the proposed BESS as supporting PacifiCorp’s system, and PacifiCorp’s need for additional storage resources. Applicant states that the specific Project objectives include providing enhanced grid reliability, resiliency, and stability. Applicant states that the BESS will “maximize” the existing system’s capability and

“improve” PacifiCorp’s ability to serve growing customer loads while reducing the risk of voltage collapse. (See Remington BESS, LLC Prehearing Brief, Page 7).

Applicant argues that the BESS project supports renewable integration, grid reliability, and commitment to clean energy targets. These benefits are supported by the evidence submitted by Applicant, and the potential benefits are acknowledged. However, benefit, even public benefit, is not the legal standard.

13. The proposed BESS does not transmit or distribute electricity. The proposed BESS does not deliver electric service to consumers. The proposed BESS functions as storage and is operated for system-support purposes. Interaction with the electric grid does not convert a storage facility into a utility service-delivery facility.
14. ORS 215.283(1)(c) requires a showing that the utility facility is required to provide the service, not merely beneficial, important, or supportive of public policy goals. PacifiCorp will continue to provide electric service regardless of whether the BESS is constructed. The proposed BESS does not qualify as a “utility facility” for purposes of 215.283(1)(c).

ORS 215.275 and MCC 17.136.040(I)

15. ORS 215.283(1)(c) states in relevant part that a utility facility necessary for public service may be established as provided in ORS 215.275. MCC 17.136.040(I) sets out the standards under which a facility is necessary if it must be situated in the EFU zone in order for the service to be provided.

The Hearings Officer finds that the proposed BESS does not qualify as a utility facility and is not necessary for public service under ORS 215.283(1)(c). However, even if the proposed BESS could be characterized as a “utility facility,” Applicant must also demonstrate that it is necessary for the BESS to be located on EFU land to provide the public service and meet the siting factors in ORS 215.275 and MCC 17.136.040(I).

MCC 17.136.040(I) requires the same showing of locational necessity and lack of reasonable alternatives as ORS 215.275. Local governments may apply this standard so long as they do not expand state criteria. *Brentmar v. Jackson County*, 58 Or LUBA 416, 426–27 (2009).

16. Applicant’s statements regarding the approval criteria for a utility facility necessary for public service are addressed below:

*MCC 17.137.040(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;*

Applicant did not provide any evidence to suggest that the proposed location is related to the technical or engineering feasibility of the proposal beyond being adjacent to a substation. Applicant emphasizes avoiding network upgrades, minimizing construction timelines, and meeting RFP deadlines.

These considerations reflect project efficiency and commercial feasibility, not technical infeasibility of non-EFU sites. The Applicant does not demonstrate that interconnection to the grid is technically impossible from non-EFU land, only that it may be more expensive or less desirable.

Applicant references options for varying design of the facility in other sections of this application that suggest the project has not been planned in detail. Without actual plans for construction of the BESS, there can be no conclusion about the technical and/or engineering feasibility of the proposal on any lands, let alone a proposed requirement to site the facility on high value farmland in the EFU zone.

As addressed below, Applicant addresses risk of fire but does not address in detail how that risk will be mitigated. The risk of fire itself carries a cascading list of associated environmental and health impacts. As a result of a lithium fire, there would be release of toxic chemicals into the air, soil and water, potential injury to first responders and citizens in the area such as respiratory issues, skin irritation, and long-term health issues. Beyond the safety issues are the environmental dangers posed by mass release of chemicals in the event of a failure of any of the batteries on site. Applicant does not address any of the technical details of these potential risks or how those risks could be mitigated. Applicant does not provide any evidence towards the feasibility of the proposed BESS to be engineered so as to mitigate the dangers inherent with BESSs.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

*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;*

A facility is locationally dependent only if it cannot reasonably operate unless it is located on EFU land.

Applicant argues that the BESS is locationally dependent because it must be located near a specific substation and within a particular transmission service area. Applicant suggests that other substations in the area would not meet the technical and engineering feasibility criterion because they would require upgrades to the networks, capacity, or new long transmission lines. Applicant states that other locations were

not suitable specifically due to requiring new overhead transmission line installation for compatibility.

Applicant did not provide any evidence to support the assertion that they examined other locations in the county for compatibility with the project. The location proposed poses dangers to surrounding farmland due to soil contamination, groundwater contamination, and chemical leakage. Applicant did not provide any information about potential emergency response at the proposed location. Applicant specifically proposes an intensive use on EFU land in a rural area instead of in an urban area adjacent to one of many substations within cities in Marion County where such a use would be potentially more appropriate from an environmental and emergency response standpoint.

Applicant suggests prolonging the life of the facility beyond the average 20-25 years for a BESS by frequent replacement of parts. Decommissioning requires collection of hazardous materials, and the Applicant does not explain how decommissioning of the facility could be performed.

Applicant's evidence demonstrates a preference for proximity, not a requirement that the facility occupy EFU land. Therefore, locational dependency under ORS 215.275 is not established.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

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

Applicant's alternative analysis narrows potential sites based upon a project-specific criteria, including parcel size, acquisition cost, network upgrade expense, and business objectives.

Applicant states that there are no other lands "in proximity to the Parrish Gap Substation". A BESS requires a substation, but not the Parrish Gap Substation specifically. The map of substations submitted by FOMC shows that there are many substations in Marion County on urban and nonresource lands. Applicant did not provide information to suggest that other potential siting locations on urban or nonresource lands were considered for the proposed BESS. Evidence on the record does not support the assertion that the proposed location is due to the lack of available urban and nonresource lands.

Applicant states that a core business objective of the Remington BESS Project is that the BESS be sited adjacent to a PacifiCorp substation to help address the utility needs of PacifiCorp. Applicant rejects FOMC's assertion that PGE substations or other substations are located outside of EFU zones and present alternative siting opportunities. Applicant contends that substations outside of PacifiCorp's system, or

outside the Parrish Gap Substation service area are not suitable due to operational and contractual considerations.

Applicant's position reflects a project preference and business strategy, not a showing of locational necessity as required under ORS 215.275 and MCC 17.136.040(I). The siting standard does not require the County to evaluate whether the proposed site is optimal or preferred for the Applicant's business model, but whether the facility must be located on EFU land in order for the public service to be provided.

The record demonstrates that a BESS requires a substation, but does not establish that it must be located adjacent to the Parrish Gap Substation specifically, nor that it must be located on EFU land to interconnect with the electric grid. Evidence submitted by FOMC includes mapping of multiple substations within Marion County, including substations located on urban and nonresource lands. Applicant did not provide evidence demonstrating that those substations were evaluated and rejected due to technical infeasibility, safety constraints, or regulatory barriers, as opposed to increased cost, longer timelines, or inconsistency with Applicant's preferred project configuration.

ORS 215.275 requires consideration of alternative locations, not alternatives that meet an applicant's preferred financial, contractual, or scheduling objectives. Evidence that alternative sites would require network upgrades, higher interconnection costs, or deviation from Applicant's business strategy does not establish that such sites are unavailable or infeasible for purposes of EFU siting.

Applicant's reliance on adjacency to a PacifiCorp substation demonstrates a preference for proximity, not a requirement that the facility be sited on EFU land. Applicant has therefore not demonstrated that the proposed location is necessary to provide the asserted public service, as required under ORS 215.275 and MCC 17.136.040(I).

ORS 215.275 requires consideration of alternative locations, not optimal or cost-effective alternatives. Evidence that non-EFU sites are more expensive or inconsistent with the Applicant's intended project and business plan does not establish that such sites are unavailable or unfeasible. Applicant's position is reasonable and justifiable, but it does not satisfy the requirements of ORS 215.275.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

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

The proposal is for a facility that would not be appropriate to cite within a right-of-way. The proposed BESS is not a utility facility necessary for public service, but if it was, this criterion would not apply.

5. *Public health and safety; and*

Applicant states it will comply with all local building and fire codes and that the facility does not produce any emissions or discharges. Applicant also states that appropriate signage will be placed on the high voltage substation equipment. Applicant states that BESS staff will be trained in fire prevention and fire department notification policies, and that staff will be required to follow those policies. Applicant does not describe the number of staff present, what hours they will be present, or what their non-emergency responsibilities will be. The staff for the BESS after initial construction are generally only on site for routine inspections and maintenance, not around the clock supervision of the system.

Applicant has not provided significant evidence to suggest that their proposal will not impact public health or create a significant safety hazard within the county.

Applicant argues that ORS 215.275 does not require any showing regarding potential public health or safety risk and argues that those considerations are not relevant to the ORS 215.275 inquiry. However, ORS 215.275 explicitly includes public health and safety as one of the several factors that may be considered in whether EFU siting is necessary. ORS 215.275(2)(e).

ORS 215.275(2)(e) treats “public health and safety” as one of several considerations, and it is not a separate approval criteria. No single factor is dispositive, and the ultimate question is locational necessity.

Public safety may be considered to the extent it is a siting factor under ORS 215.275.

MCC 17.136.040(I) requires the same showing of locational necessity and lack of reasonable alternatives as ORS 215.275. Local governments may apply this standard so long as they do not expand state criteria. *Brentmar v. Jackson County*, 58 Or LUBA 416, 426–27 (2009).

Applicant had access to the public record of concerns discussed at the public hearing regarding BESS. These concerns include significant inherent risks and potential impacts that result from establishment of a BESS on EFU land.

The potential for thermal runaway resulting in lithium fires and explosions of the batteries themselves is a serious risk, and the risk for environmental hazards is significant. Chemicals for fire suppression could runoff into the surrounding soils, groundwater, and streams across the subject parcel. At this location, due to the intermittent and perennial streams that flow through the proposed facility, this

chemical leakage could directly pollute water bodies. Those streams flow into canals utilized by Santiam Water Control District to provide water to farms in the area.

Contamination of the groundwater and the streams on the subject parcel may result in a loss of water supply required by farmers in the area to successfully grow crops, and the groundwater supply depended upon for drinking water. The risks to the residents, farming operations, and environment in the immediate area are significant.

Public health and safety considerations are evaluated solely as a factor under ORS 215.275 to determine whether the proposed facility must be sited on EFU land, and are not relied upon as an independent approval criterion or separate basis for denial. However, Applicant did not address the potential adverse impacts to agriculture and the environment resulting from the BESS project.

The necessity for mitigation of the risks imposed by these facilities is one reason the county is prohibiting BESS through Ordinance 1480 until specific standards can be developed. This reference is for context only and is not relied upon as a basis for the decision, which is grounded exclusively in the statutes and code provisions in effect at the time the application was submitted.

Applicant did not provide any significant evidence that the proposed BESS will not create significant hazards to public health and safety or that public health or safety considerations require siting the facility on EFU land as opposed to non-EFU land.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

If public health and safety is not considered a “criterion” but rather one of several factors for consideration under ORS 215.275, fire risk supports denial. EFU land is not inherently safer for lithium battery fires than industrial or urban lands because EFU areas have limited fire response infrastructure, longer response times, the presence of agricultural operations may complicate fire suppression.

Public safety considerations do not independently justify denial as a criteria, however, battery fire risk is a legitimate public health and safety consideration, and does not demonstrate that the proposed BESS must be sited on EFU land. EFU land does not provide a safety advantage over non-EFU locations.

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.*

Applicant states that cost was only one of the factors analyzed when selecting this location. The applicant did not provide analysis of any other factors. The evidence on the record suggests that cost is the sole deciding factor when selecting this location. This location has existing overhead transmission lines. Applicant states that they analyzed other locations near substations in the surrounding area, but all those stations would require upgrades such as installation of overhead transmission lines. The upgrades to a location are costs associated with that location. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

- 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.*

Applicant states that it will comply with this section of code when the useful life of the facility is realized. Applicant did not provide any plan for decommissioning and restoration, and furthermore have not provided any evidence that it is possible to restore the project site to agricultural use after developing it with a BESS.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

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

MCC 17.136.060(A)(1) contains the criteria for the farm impacts test in the EFU zone. If the BESS is treated as a utility facility under ORS 215.283(1)(c), the farm impacts test does not apply, but the necessity and siting standards apply. Applicant argues that the farm impacts test does not apply because the Project qualifies under ORS 215.283(1)(c).

Because it is determined that the BESS is not a utility facility, the farm impacts test applies. The farm impacts test does not impose a new approval methodology, but

MCC 17.136.060(A)(1) governs non-farm uses in the AR/EFU context that are not utility facilities necessary for public service and expressly incorporates the standards of ORS 215.296. Where a proposed use does not qualify under ORS 215.283(1), MCC 17.136.060(A)(1) provides the only potential approval pathway, if any, and requires findings addressing impacts to accepted farm practices.

Local governments are required to apply ORS 215.296 where applicable and may not waive or ignore the farm-impacts test once a project falls outside ORS 215.283(1). *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013).

Because the proposed BESS does not qualify under ORS 215.283(1)(c), the farm-impacts standards of ORS 215.296 and MCC 17.136.060(A)(1) must be considered.

The farm impacts test has been recently updated by the Department of Land Conservation and Development to accurately represent case law.

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.*

*For purposes of this section, a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:*

- A. *Identification and description of the surrounding lands, the farm and forest operations on those lands and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;*
- B. *An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and*
- C. *An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.*
- D. *For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*
- E. *For purposes of this section, potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under this section.*
- F. *In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the*

*significant changes or significant increases in costs described in this section.*

Applicant disagrees that the farm impact test applies, but addressed the farm impacts test by stating that the project will not result in any discharges or emissions to the environment, and that they are committed to environmentally responsible development. Applicant acknowledges that if the county requires them to determine environmental monitoring and mitigation plans, then they would be willing to do so sometime in the future. The applicant provided no information about how the environmental monitoring could be conducted or what mitigation plans would entail. Applicant provided no detailed information about the environmental impacts of covering 15 acres with lithium batteries.

Applicant did not provide a detailed description of the surrounding lands or agricultural activities. Applicant did not provide any information about how the BESS might impact the surrounding agricultural activities. The limited evidence on the record, which is the result of Applicant's position that the farm impacts test does not apply, does not support the claim that the project will neither result in change in, or significantly increase the cost of, farm activities in the area.

Santiam Water Control District explicitly raised concerns that the Project will have an impact on surrounding lands, specifically an impact on water rights for farmers in the district. Applicant argues that it does not have water rights, and is not privy to the relationship between the landowner and water rights.

Applicant correctly stated at the hearing that it would be inappropriate to condition approval on a water rights analysis. However, because the farm impacts test applies, Applicant must address whether the Project will have an impact on surrounding lands.

Because the Project does not qualify as a utility facility necessary for public service under ORS 215.283(1)(c), it could be approved only, if at all, under MCC 17.136.060(A)(1). That section requires findings addressing impacts to accepted farm practices pursuant to ORS 215.296. Applicant did not seek approval under MCC 17.136.060(A)(1) and did not submit evidence sufficient to satisfy those criteria.

- 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.*
- 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.*
- f. If the criteria contained in this subsection (1) 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.*

No sewer system is proposed. The proposed facility is not a natural gas pipeline or transmission line. The proposed BESS is not a utility facility necessary for public service, but if it was, the above criteria d, e, & f would not apply.

- 17. Applicant applied for approval of an administrative review to construct a battery energy storage system as a utility facility necessary for public service. A BESS is not utility facility necessary for public service. If a BESS could be approved as a utility facility necessary for public service, this proposal would be unable to satisfy the applicable criteria.

## **VII. Order**

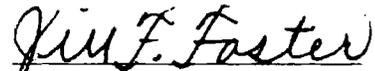
It is hereby found that Applicant has not met its burden of proving the applicable standards and criteria for approval of an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200).

For the reasons stated herein, the Hearings Officer determines that the proposed use does not satisfy the applicable requirements of Marion County Code, including but not limited to MCC 136.040(I) and the standards for siting a utility facility necessary for public service, ORS 215.283(1)(c), ORS 215.275. The application is hereby DENIED.

### VIII. Appeal Rights

An appeal of this decision may; be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court Str. NE, Suite 2130, Salem, Oregon by 5:00 p.m. on the 5<sup>th</sup> day of February, 2026. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon this 21<sup>st</sup> day of January, 2026.



Jill F. Foster  
Marion County Hearings Officer

**CERTIFICATE OF MAILING**

I hereby certify that I served the foregoing order on the following persons:

Linsey King  
4015 Filbert Avenue  
Keizer, OR 97303

Brent Stevenson  
284 E Water Street  
Stayton, OR 97383

Cristina Gispert  
101 W. Broadway Street  
Suite 1120  
San Diego, CA 92101

Nema Jain  
1999 Harrison Street  
Oakland, CA 94612

Alexander Thompson  
1999 Harrison Street #2720  
Oakland, CA 94612

Ethan Westcot  
7818 Rogers Avenue  
Wauwatosa, WI 53213

Justin Bieber  
2009 Lucky John  
Park City, UT 84060

Steve Pfeilter  
1120 NW Couch Street  
Portland, OR 97210

City of Turner (via email)  
manager@cityofturner.org  
7230 3<sup>rd</sup> St SE  
Turner, OR 97392

Area Advisory Committee: (via email)  
Arkaye2@gmail.com (Aileen)

Roger Kaye  
Friends of Marion County  
P.O. Box 3274  
Salem, OR 97302

1000 Friends of Oregon  
133 SW 2nd Ave  
Portland, OR 97204-2597

Pudding River Watershed Council (via email)  
anna@puddingriverwatershed.org  
cleanpuddingriver@gmail.com

**County Agencies Notified:**

Assessor's Office (via email)  
assessor@co.marion.or.us

Tax Collector (via email)  
NMcVey@co.marion.or.us

Surveyor's Office (via email)  
KInman@co.marion.or.us

Fire District: (via email)  
denk@wvi.com

Planning Division (via email)  
breich@co.marion.or.us  
abarnes@co.marion.or.us  
jspeckman@co.marion.or.us  
ediaz@co.marion.or.us

Building Inspection (via email)  
[pwolterman@co.marion.or.us](mailto:pwolterman@co.marion.or.us)  
[Kaldrich@co.marion.or.us](mailto:Kaldrich@co.marion.or.us)  
[CTate@co.marion.or.us](mailto:CTate@co.marion.or.us)

Public Works LDEP Section (via email)  
[jasmussen@co.marion.or.us](mailto:jasmussen@co.marion.or.us)  
[mcldep@co.marion.or.us](mailto:mcldep@co.marion.or.us)  
[JShanahan@co.marion.or.us](mailto:JShanahan@co.marion.or.us)

School District:  
Cascade High School (via email)  
[charmon@cascade.k12.or.us](mailto:charmon@cascade.k12.or.us)

Code Enforcement (via email)  
[CGoffin@co.marion.or.us](mailto:CGoffin@co.marion.or.us)

**State Agencies Notified:**

Department of Environmental Quality  
4026 Fairview Industrial Drive SE  
Salem, OR 97302  
Oregon Department of State Lands  
4026 Fairview Industrial Drive SE  
Salem, OR 97302

Oregon Department of Fish and Wildlife  
4034 Fairview Industrial Drive SE Salem,  
OR 97302.

DLCD [hilary.foote@state.or.us](mailto:hilary.foote@state.or.us)

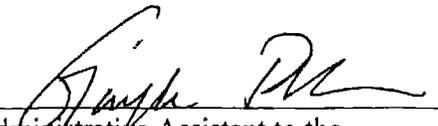
**Special Agencies Notified:**

Electricity - Pacific Corp (via email)  
[www.pacificcorp.com](http://www.pacificcorp.com)

Water District – Santiam  
284 E. Water St.  
Stayton, OR 97383

RWE Clean Energy  
Attn: AL Thompson  
1999 Harrison St. Suite 2720  
Oakland, CA 94612

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 21st day of Month, 2026 and that the postage thereon was prepaid.

  
\_\_\_\_\_  
Administrative Assistant to the  
Hearings Officer



**3AR25-015 HO Hearing Audio 1.mp3**

**[CS1002314]**

Jill Foster: It's about 2:00. Everybody ready to proceed?

Ryan Thomas: Ready.

Jill Foster: Okay. All right, good afternoon. It is Thursday, November 6th, 2025. We are here for two land use hearings. The first hearing is AR 25-015. We have the two cases. The first one is going to be the application of Remington BESS. Do we say B-E-S-S or BESS?

Ryan Thomas: We usually say BESS

Jill Foster: BESS, okay. LLC on behalf of Niels Paul Jensen and Ima L. Jensen Revocable Trust. If you have not done so, please sign in and give me your mailing address if you plan to testify or you'd like a copy of the decision. There's 2 separate sign-in sheets for the two separate matters, so make sure you sign in the correct sheet. I'm going to go over the procedures to begin. Talk about the nature of the case. We'll hear any preliminary objections. Summarize the material in the case file. Planning division will present its staff report. Applicant or representative will present its case. We'll hear any testimony in favor of the application, then any testimony in opposition to the application. If anyone would like to present general comments, not for or against, but be heard on the matter, they will have an opportunity to testify. The applicant will have an opportunity for rebuttal as they have the burden of proof in land use cases. We will then close the hearing unless there is a request to continue the hearing or to keep the record open. No decision will be made at the hearing. My decision will be in writing, and a copy of the decision will be sent to the applicant, interested parties, affected governmental agencies, and anyone else who requests a copy. We are recording the hearing today. Testimony is taken from tables up front and will be under oath or affirmation. The recording will become a part of the official record. The record in this case is a public record. Any documents that are submitted become part of the record and generally cannot be returned. If you have any documents you'd like to submit to the record, please let the other party take a look at them, then hand them to us and we will mark them as exhibits and make them a part of the official record. The failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue may preclude an appeal based on that issue and may preclude it from being raised at a later time. ORS 197.7633. Failure of the applicant to raise constitutional or other issues relating to a proposed condition of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in a

circuit court. For a condition of approval to apply, it must be stated with sufficient specificity to enable the applicant to respond to the condition prior to the close of the final local hearing, ORS 197.7963. I've had no ex parte contact in this matter. I mean, I haven't had any communication with either the hearings office or the applicant about the subject matter outside of the case file and any supplement documents that have been sent to me. We are here on the application of Rem Bess LLC on behalf of the Niels Paul Jensen and Ima L. Jensen Joint Revocable Trust. It's AR 25-015. I'm not sure if I said it. My name is Jill Foster, Marion County Hearings Officer. This matter before the hearings officer is an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 46.35 acre parcel located in the 5200 block of Pearson Road, Southeast, Turner, Oregon. Before I summarize the material in the case file, I'll ask the parties if there are any preliminary objections to notice, jurisdiction, or conflict of interest. Mr. Speckman.

John Speckman: Nope.

Jill Foster: And the applicant? None. The case file in this matter contains the application and the applicant's statement. It includes supporting documents such as the deed, Secretary of State printout for the entity, Marion County Commissioner's statements and provisions of the Marion County Code on battery energy storage systems, a legislative amendment, ordinance number 1480, site plan, zoning map, notice of decision, addresses for notice and hearing notice. There is the notice of appeal and request for hearing, comments submitted from the Friends of Marion County with exhibit, Marion County Public Works Memorandum, request for comments, and then comments that were submitted, a battery energy storage system mitigation sheet, and then the applicant's pre-hearing brief that included exhibits and attachments to that. This complete file will be made a part of the record. All testimony should be directed to the subject matter of this case. The laws and provisions applicable to this case are found in Marion County Code 17.136, exclusive farm use zone. Those are the Marion County criteria that I believe apply. If there are other criteria that you believe apply, of course including state statutes, but please let me know if there's other things that I should consider. Any procedural questions before we begin?

John Speckman: Nope.

Jill Foster: Okay, thank you. Then we will begin with planning division. Mr. Speckman, please state your name, spell your last name for the record, and provide your mailing address.

John Speckman: John Speckman, S-P-E-C-K-M-A-N. Mailing address is 5155 Silverton Road, Northeast, Salem, Oregon, 97305.

Jill Foster: Thank you. Please proceed.

John Speckman: For the record, this is John Speckman with Marion County Planning, and at the onset, there were three submissions after the case file was brought down to, or after we brought the case file down to the hearings officer. The first was received on October 31st. It is the pre-hearing brief, along with an appendix and 22 exhibits. This was provided electronically. Yesterday, we received testimony from John J. Audley in support of AR 2515. And we received testimony in opposition from Santiam Water Control District. And I'm going to provide all these physically to the hearings officer now.

Jill Foster: Okay. So, just for the record, this is the submission. The brief with appendix is included in the record. And I have not seen these two yet. So, are those considered part of the record or are they considered exhibits?

John Speckman: We would consider them part of the record. We're calling them pre-hearing exhibits two and three.

Jill Foster: Okay, mark them as such.

John Speckman: And staff has copies here if anybody would like to see them and digital copies are available on the public hearings website.

Jill Foster: Antium water controls 3 and Testimony from John J. Audley is pre-hearing submission one, or I'm sorry, two.

John Speckman: Two, yes.

Jill Foster: Thank you.

John Speckman: Thank you. The application before you today is for a battery energy storage system, applied for as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5,200 block of Pearson Road, Southeast, Turner. Surrounding uses are agricultural and rural residential. The criteria for this application to be met do not exist within Marion County Code. The application submitted included responses to the criteria in Marion County Code 1713640i for a utility facility necessary for public service. On April 15, 2025, the Marion County Board of Commissioners held a work session to discuss battery energy storage systems, or BESS. These systems are not expressly contemplated in the county zoning code, state statute, or state administrative rule. The Marion County Board of Commissioners determined that BESS are not utility facility necessary for public service, as found in Marion County Code 17-136-40i, and that furthermore, there is no use identified in Marion County Code that a BESS could fall under. Therefore, BESS are not permitted in any zone within Marion County. The board expressed a desire to clarify the applicability of existing code to

this use, and on May 14th, 2025, initiated a process to consider code amendments. On June 11th, 2025, the board held a hearing to consider amendments to clarify existing code provisions related to BESS and Marion County Urban and Rural Zone Codes, Chapters 16 and 17. At this public hearing, held June 11th, 2025, the Marion County Board of Commissioners clarified the county's interpretation on the record that battery energy storage systems are not utility facilities necessary for public service. The Marion County Board of Commissioners signed Ordinance 1480 on July 9, 2025, in order to add clarifying sections of text to Chapters 16 and 17 of the Marion County Code that outright prohibit BESSs. These sections of code were added for clarification only because BESSs were not permitted under any section of code prior to July 9, 2025. Ordinance 1480 does not apply to this application because it was signed into code after the application was submitted. The applicant was made aware of the county's determination, but still chose to apply for an administrative review to construct a BESS under the erroneous classification of a utility facility necessary for public service. The application was submitted on June 30th, 2025, after the county's interpretation was already on record. BESS are not necessary for public service, as evidenced by the pre-existing public service of electric utilities. While BESS is not a utility facility necessary for public service, staff considered how the application addressed the criteria for utility facility necessary for public service and found that this proposal does not meet those criteria. Staff is in the process of writing potential BESS code that addresses the unique nature of these facilities. There's currently no way to approve a battery energy storage system in Marion County, and therefore the application must be denied. And I will stand for any questions you may have.

Jill Foster: I probably will, but not yet.

John Speckman: Right on.

Jill Foster: And are you Ms. Thompson? No.

Mr. Thomas I'm Mr. Thomas.

Jill Foster: Oh, Mr. Thomas. Okay. And you are an Oregon State Attorney, so I'm not going to swear you in.

Ryan Thomas: Correct.

Jill Foster: And just in your name?

Christina Gisbert: My name's Christina.

Jill Foster: Okay. And are you counsel as well?

Christina Gisbert: No.

Jill Foster: All right, please proceed.

Ryan Thomas: Good afternoon, Hearings Officer Foster. My name is Ryan Thomas. I'm a partner at Burton Schooey, and we represent the applicant, Remington Best, LLC. I anticipate their presentation will be about 20 or maybe 30 minutes. After my remarks, we'll hear from Christina, who's going to talk about the project purpose and scope, as well as some specific site selection processes and details about the alternative analysis we provided as Appendix A. Also speak to the safety record with BESS and the safety standards that would apply to this project. We have a few other RWE technical experts that are here in the gallery should there be any questions. They include Ethan Westcott, who's the director of BESS projects in project engineering, and Justin Bieber, who's a principal at Energy Strategies, who can speak to interconnection and transmission issues, and Neha Jain, who's a battery design engineer and can speak to technical and safety issues. I don't anticipate them to provide testimony unless there are specific questions they can help answer. And I want to note that RWE is the parent company of Remington Best, LLC. In my presentation, I'm going to address three topics. First, I want to speak to the statutory framework that applies here. That's ORS 215-283 and ORS 215-275, and I'll describe why BES is a utility facility. It's necessary for public service. Second, I'll speak to why the local requirements, including the ordinance banning BES, cannot apply here. Only the statutory framework controls, and that comes from the Brent Marr v. Jackson case and ORS 215-296. Finally, I'll close by speaking briefly to conditions of approval. Please interrupt me at any point if you have questions.

Jill Foster: Okay, thank you.

Ryan Thomas: Okay, first, the statutory framework, and the key inquiry here is whether best is utility facility that's necessary for public service. There are two statutes at the heart of this case, ORS 215-283-1 and ORS 215-275. 283 sub one says that utility facilities necessary for public service can be cited on EFU land. 215-275 provides the test to determine whether a utility facility is necessary for public service. So, first, I'll talk about why BESS is utility facility. Working courts broadly define utility facility to mean equipment or apparatus, whether standing alone or as part of a structure that functions to perform, provide, in whole or in part a service, such as the production, transmission, delivery, or furnishing of electricity. That's a quote from Cox v. Polk County. BESS is an increasingly critical component of an established utility structure here at Pacific Corps, and it furnishes renewable electricity to the public when it's needed most. Examples of utility facilities and cases in the legislative history include things such as radio towers, cell towers, transmission lines, and substations. Legislative history in interpreting case law includes broad

statements such as the following, which show the general and open nature of the term utility facility.

00:15:00

Ryan Thomas:

Utility facilities intended to capture, quote, such things as power substations, or transformer substations, and so on. That's from a 1963 House Committee hearing. That same committee hearing, I believe it was the same committee hearing, maybe another. Utility facilities, quote, cover a wide range of utility things, such as cell towers, sewer lines, and booster stations. And ORS 215-283-1 is a, quote, general category for utility facilities. That's from Save Our Rural Oregon versus FSEC. BESS is a modern technology that's essential for today's energy grid and serves a function much like a substation or a booster station. I want to read a quote from House Bill 2193 committee summary that I think captures well why BESS is so critical in today's energy grid. Quote, one of the distinctive characteristics of the electric power sector is that the amount of electricity that can be generated is relatively fixed over short periods of time, although demand for electricity fluctuates throughout the day. Electricity storage devices can manage the amount of power required to supply customers at times when need is greatest, which is during the peak load. Many renewable sources, most notably solar and wind, produce intermittent power. Energy storage is one option to provide more reliable energy supplies. State and utilities alike acknowledge that best are necessary components of providing electrical service and integrating renewable resources into the grid to meet the state's clean energy goals and mandates. I want to highlight just a couple of those state laws that reflect this. House Bill 2193 required electrical companies to acquire storage systems like BESS. That was on the books, I believe, in 2015. House Bill 2021, which is more recent, requires significant emissions reductions and the Department of Energy's resulting energy strategy calls for significant investment in battery storage to accomplish those targets. Facilities in their planning documents are setting specific targets for battery storage because they recognize that it's necessary to implement these significant reductions. For example, and we provide this in the record, Pacific Corps' integrated resource plan, which is their document that guides how they're going to meet the demand and anticipate with the resources, and it results in the need to acquire new resources. That document and the associated clean energy plan identify significant requirements to purchase or develop battery storage. Both of those documents are reviewed and approved by the Public Utility Commission as part of a robust process. Coming out of the IRP is an RFP. So integrated resource plan says here's all the demand, here's how Pacific Corps intends to achieve it. The RFP then is the specific request for proposals for how those energy needs are going to be met. And that's what this project is responding to. It's responding to Pacific Corps' RFP, identifying a need, and this 200 megawatt BEST project will respond to

that need. We also know from established case law that the utility facility allowed on EFU lands under 283-1 is not limited to facilities that provide service to the local residents alone, but also includes intra and interstate facilities. That's from McLaughlin v. Douglas County. Best serve critical public utility functions and fits squarely within the term of utility facility under 283-1, and this finding is supported by the legislative intent for this flexible category of utility facilities. It includes things like radio towers, cell towers, and substations. This finding is also necessary based on the nature of today's grid, which requires storage to deliver power from alternative energy sources. The sun's not shining, and when the wind's not blowing, the battery then discharges power back to the grid. The best are utility facilities. So, once it's established at BESS as a utility facility, the question becomes whether Remington considered reasonable alternatives outside of EFU, and here it did.

Jill Foster: Can I just ask a question? How do you think about the Marion County Code 17.110584 definition? Do you need to consider that?

Ryan Thomas: You know, we don't. I don't believe we do because here it's, and we'll get to this in a little in a moment.

Jill Foater: OK

Ryan Thomas: But Brent Marvey Jackson says that those uses under 2831 utility facilities necessary for public service. Counties can't add to any legislative requirements there. So, the ordinance can't ban them, it can't change them, it can't impose other additional requirements that would prevent BAS from being cited. So here when we're talking about 283-1 use, I think we're limited to the statutory construction and interpreting case law.

Jill Foster: But that code provision was pre-existing the ordinance, wasn't it?

Ryan Thomas: I don't know that it's... From a timing standpoint, and I guess I don't know when that was adopted, but if it were, I don't know that it's relevant for purposes of Brent Mar, because I don't think a county can adopt, even if it adopted before the ordinance or the application, Brent Mar says you cannot add to the statutory requirements. So, a local county can't say you actually need to do X, Y, and Z. It's limited to Brent Mar, and it says that 283-1 uses, not 283-2 uses, which are conditional uses, 283-1 utility facilities. Those are used as a matter of right.

Jill Foster: Okay. I'm sure you'll do more in the Brentmore analysis. Thank you.

Ryan Thomas: Okay. So next, I want to speak to the alternatives analysis. So, once we identify the best utility facility, the question is, did Remington consider reasonable alternatives? And we provided as Appendix A to the brief, the alternatives analysis that Remington performed to evaluate sites and to determine. Excuse me, this reasonable alternatives test, it provides 6

factors under 275-2, and the alternatives says you need to find one of those six factors to justify the site, not all six, not more than one of them. They're all factors, they're not criteria. The court in Spring v. Washington County said that the six factors in 275 are intended to provide a roadmap to courts and hearing officers for what they are to consider and what not to consider when defining necessity. That's sprint at 476. Remington's application is based on the three factors in 270, the first three in 275, and those are technical and engineering feasibility, locational dependence, and the lack of available urban and non-resource lands. As I noted, it's important that not all six factors must be met, only one, and much of the county's denial suggests that the factors are criteria, but that's not the case. So, the denial focuses on the life safety factor as well. I believe that's factor four, but that's not the basis of the Remington application. That factor says the utility facility must be placed on EFU land, but because doing so on other lands would prevent life safety concerns. The county seemed to conflate that factor, suggesting that Remington had a positive obligation to demonstrate that putting BESS on EFU land would not present life safety concerns. And that's just not the right way to interpret it, and it's not the basis for the application. There are three key requirements of a, or factors to consider when looking at the alternatives analysis. This comes from the Sprint case. First is that a utility's decision about its service needs should be respected, and a site that does not meet those needs is not a reasonable alternative, provided those objectives advance the goal of providing utility services. So, when you review Appendix A, it identifies the business objectives for Remington as well as specific siting criteria. One of the key business objectives here is providing service to Pacificorp. We noted that one of the commenters provided a map of substations for PG&E, but here those aren't relevant because the business objective is not to provide service to PG&E. When evaluating whether an alternative is reasonable, an applicant does not need to consider different methodologies. So, the way that the battery is provided, that doesn't need to be second guessed or reevaluated. That methodology is a part of the business case. Finally, only sites outside of EFU land must be considered. So, if there were to be a better site within EFU land, that doesn't need to be considered. That's only outside of EFU. And again, those principles are all found in the Sprint case. Ms. Gisbert is going to get into detail about the project objectives and citing criteria, so I'm not going to get into those now. Additional detail, and that's fleshed out in Appendix A. The record and what you'll hear from Ms. Gisbert does include substantial evidence demonstrating that reasonable non-EFU alternatives to the current location were considered, but they were not feasible due to the citing constraints. One thing that the denial mentions is that cost was, I'm afraid if it's a significant factor or sole factor. That's not the case. The 275 says the cost can be a factor so long as it's not the only factor. And no sites were eliminated based solely or primarily on cost. The fact that the threshold that Remington identified for a site, you

know, it's common for utility upgrades to be needed when you need to connect the BESS to the grid. The threshold for that becoming too expensive was \$20 million in this case. And again, no sites was that an issue or out and then eliminated the site. So, in conclusion, the BESS utility facility in Remington provided substantial evidence in the alternatives analysis that they considered non-EFU alternatives. None of those sites were reasonable due to technical and engineering feasibility, vocational dependence, and lack of available resource lands. So that's the statutory framework. BESS utility facility and necessity for public service. I do want to get into, and I think this was your question earlier, a bit more about the ordinance and why the local requirements don't control. It would be ordinance 1480. I'm going to quote from Bryn Mark. Under ORS 215 2831, the county may not enact or apply legislative criteria of its own that supplement those found in 215. It goes on to say that those uses in 283.1 are uses as of right, and they may not be subjected to additional criteria. Bryn Mar also has a thorough description of the legislative history of 283-1 that we found very helpful for understanding how the legislature was thinking about utility facilities and what a county may or may not do with respect to those facilities. County's EFU zoning code cannot deviate from the statutory requirements in ways that conflict with the statute. And when they do, the statute controls and the offending ordinance provisions are void, according to Hansen and Riggs, both of which are cited. Here, the ordinance conflicts with 215-283-1, and it can't apply to utility facilities on EFU land, and it doesn't apply to this application. Even if the county did have the authority to enact this ordinance with respect to EFU land, the ban would still not apply to this application. Morgan's goalpost standard and the county's prior interpretation, because the standards that were in effect the time of the application should apply, not those that were enacted after. Here, Remington applied on June 30th, and the ordinance was adopted on July 9th. I want to take a moment to describe some of the context around the adoption of ordinance. In 2024, the county approved a similar BESS project called Swift, which RWE now owns. At that time, the county found BESS to be utility facility necessary for public service, and that decision's exhibit 13. That project serves PG&E. Prior to Remington's application for this project, Remington and the property owner had been in regular communication with the planning division who did not identify the proposed code amendment banning BESS. Remington did receive notice, or didn't receive notice of the proposed ordinance, and based on e-mail communications, justification was the ordinance would not affect the BESS project. Afro, quote, Nor the recent application for a BESS we received last week. The amendments only affect applications moving forward after July 9th. At the hearing before the Board of Commissioners on the ordinance adoption and prior to the adoption, RWE expressed concern about the ordinance affecting the remedy project. Response planning division represented the ordinance would not affect the project,

which appeared to address the board's concern. I quote, the, landowner, also has an application in it. We received it last week for different sites, and these amendments don't affect the application either. These amendments affect any application going forward, nothing that's currently in process. That was on July 9th, and then 11 days later, the application was, sorry, 11 days after the application was submitted, and then three weeks later, it was denied based largely on that same ordinance. While the ordinance appears to be not applied to EFU land under Brent mar, Hanson and Riggs, it's an unlawful basis to deny the application. Okay, at the last part here, I want to speak briefly to some conditions. Planning division applied the farm impacts test in its denial, but by its own terms in the statute, this is ORS 215-296, it does not apply to uses under 283-1. It only applies to those that are 283-2. ACs for any conditions here are found in ORS 215-275-5, which says that the county can impose conditions to minimize impacts, if any, on surrounding farm use in order to prevent a significant change in accepted farm practices or significant increase in the cost of farm practices on the surrounding farm. It does not require an affirmative showing. Instead, it's permissive. and only applies if there's evidence of significant changes or significant increase in cost. And the record does not include substantial evidence showing either of those to be true. We actually have obtained and will provide here to the staff and to the hearing officer a letter of testimony from the farmer and owner of the 300 acres surrounding the project who states that there would not be a significant change or increase in cost of the project. And although other, this issue may be raised during testimony today, we don't expect any substantial evidence in the record with support of finding that the project will result in significant change to farm practices or a significant increase in cost. There were suggested conditions by the Water Control District.

00:30:00

Ryan Thomas:

Based on our reading of their comment letter, those appear to be based on an incorrect interpretation that conditional use criteria apply here. This is not a conditional use permit and those criteria don't apply and as noted before, the farm impacts test would not apply. Both of those appear to be a significant basis for their comments. Another basis for their comments appeared to be statewide planning goals, but those don't apply after acknowledgment of the county's comprehensive plan and land use regulations. And that's the verdict. So, we don't see evidence in the record to support the project will result in a significant change in farm practices or an increase in costs. And we ask that the control districts proposed conditions be ignored. Existing water law and state water quality laws would address any water rights and water quality issues that are raised, including addressing stormwater discharge and the potential abandonment of any water rights at the location. Those would also be addressed by existing water law and not in the condition. And as shown

on the site plan, the BESS project will have stormwater detention on site and a further condition is not warranted. We don't think that there are conditions that are necessary to impose on this project based on the record before you, based on 255. But if the county were to find that conditions are appropriate here, we suggest that the conditions imposed by the county on the SWIFT project would be appropriate, as with conditions recommended by the Turner Fire District, the building department, and engineering staff, all of which the project would be complying with anyway. And regardless of what conditions are imposed, the project will comply with fire code requirements and other state requirements that would apply to this project. So, in sum, we respectfully request the county approve the application as utility facility necessary for public service. Appreciate your attention. And unless there are any other questions, I'll turn it over to Christina.

Jill Foster: Just to clarify, I think it was your earlier answer. So, the ordinance is one thing we focus on, but even if there were code provisions that prohibited it before, those are more restrictive than the statute and not permissible.

Ryan Thomas: That's right.

Jill Foster: I understood John Speckman to say, the way we see it, it's not allowed anyway, and the ordinance just clarifies.

Ryan Thomas: That's right. Yeah, I've heard that too, and we find that irrelevant under Brent Marr, the timing of it, even if we're on the books before, the county doesn't have the authority to impose additional restrictions on EFU land. Now, with respect to best on other land, the ordinance very well may stand. So, we're nearly looking at additional requirements on EFU land. And so, with respect to utility facilities under 283-1, counties are very limited. In fact, they can't impose additional conditions that would prevent that use. There may be ancillary conditions, again, a building permit, typical things, access to the roadway. Those, of course, could be conditions on the use, but it cannot prohibit or outright ban on EFU land that's within the control of the legislature.

Jill Foster: Okay, thank you for clarifying that.

Christina Gisbert: All right. Good afternoon. My name is Christina Gisbert, and I serve as the Director of Development for the Remington Energy Storage Project here in Marion County.

Jill Foster: Ms. Gisbert, I think I'm supposed to swear you in too. Do you swear or affirm that the testimony you'll give in this proceeding will be true to the best of your knowledge?

Christina Gisbert: I do.

Jill Foster: Thank you. Please proceed.

Christina Gisbert: I'm here today to discuss how RWE, as the parent company for Remington BESS LLC, selected the proposed site for its approximately 200 megawatt BESS facility. In my presentation, I'll provide you with background on the site selection process and discuss some of the siting criteria that led us to the site. I anticipate presenting for about 9 minutes and I'm joined here today with four of my colleagues who can provide additional technical expertise for any questions you may have about the project. Battery energy storage systems are no longer optional for the modern grid. They function as core grid assets, similar to substations and transmission lines. They provide the flexibility and reliability needed for modern power systems. Here in the Willamette Valley, storage ensures continuous service by balancing supply and demand in real time. Without it, the grid risks instability and outages for our community. I'd like to also note that battery systems are roughly 100 times smaller in land footprint than a solar facility for the same mega watt rating. We understand, based on Pacific Power's documentation and its integrated resource plan, that the utility has identified a need for energy storage within the Pacific Power Willamette Valley Service Area. The Integrated Resources Plan is a long-term planning document that electric utilities prepare to outline how they will meet future energy needs in a cost-effective, reliable, and sustainable way. In my professional experience and of that of my colleagues, some who've worked in the industry for over 40 years, none of us have successfully developed a power plant in this particular service area. It's been a goal of our company to have a presence here. But, the opportunity has consistently eluded us due to the siting constraints discussed in our alternatives analysis. That's why we were thrilled to finally see a positive result in the first time of our careers that satisfies our siting criteria. This is a milestone for our business. Our goal is to build an approximately 200 megawatt energy storage facility in direct response to Pacific Power's integrated resource plan which calls for 300 megawatts of energy storage within the Willamette Valley Service Area. We identified 200 megawatts as the optimal size to take advantage of the economies of scale and help reduce costs for ratepayers. I'd like to share how we determined that this particular EFU parcel next to the Parish Gap Substation could deliver a positive outcome within the Willamette Valley Service Area. We prepared an alternatives analysis covering the entire Willamette Valley. This alternatives analysis was provided as part of the brief and here, and I want to highlight the siting criteria that we used in our process. The first thing we looked for was not EFU lands that are within about one mile of a utility substation. Limiting it to one mile is important because it will reduce line losses as you transmit power across a transmission line, you lose a little bit of power. And it also reduces the footprint of the facility and makes permitting possible because the longer the line, the more underlying encumbrances you have to cross. We also evaluated the voltage class and available transfer capacity for each substation. For a

project that is 200 megawatts in size, the substation needs to be of a voltage class rating of 115 kilovolts. We were able to estimate the available transfer capacity by studying the Pacific Core Q, which shows all of the existing interconnection applications for each of the substations throughout their service area. We also looked at land size. We were looking for parcels that were about 15 acres in size. Our rule of thumb is 1 acre per 20 megawatts for energy storage, plus 2 acres for the substation. This gives us room for, you know, detention basins, access roads, buffers, anything we need to avoid on the ground. We evaluated the interconnection commercial operation date. When you make a filing with a balancing authority like Pacific Corps, they tell you what the soonest date is that you can become commercially operational. We needed that date to be no later than December 31st, 2029, so that we could respond to their current RFP. The RFP is a request for proposals, which is basically a request for potential power plants that could deliver on that COD, commercial operation date. We also estimated the network upgrade costs, and we can see that pretty clearly when you study the queue. The limit that we sought to stay within was \$20 million. We found after modeling dozens of, after doing the financial modeling for dozens of power plants, once you get above 20 million, the project won't pencil. The price per megawatt becomes so great that it's way out of market. No utility will be able to contract with you, know, to increase prices for ratepayers. And even if you were to get a contract, the Oregon PUC would deny the contract because their job is to also protect the ratepayer. So, 20 million was the threshold. We looked at topography. We set the limit to be actually kind of on the high side, in my opinion. The slopes needed to be 15% or less. The batteries need to be very flat. They're heavy. They require robust foundations. But we need to look out for access to the site. Heavy equipment would be traveling those roads for construction and certainly for emergency services. So, 15% slope was the limit. We took environmental considerations into account. We looked for wetlands, water features, other environmentally sensitive areas. We looked at the zoning for non-EFU lands. We needed to be sure that they allowed for industrial or utility facilities. And we also looked at underlying utility crossings to make sure that they weren't cumbersome. We tried to avoid crossing freeways or major gas transmission lines, things of those natures. So, the results of this analysis sheds light on why none of our experienced developers have previously built in the Willamette Valley. Out of the 30 substations examined, only 6 met the voltage criteria and transfer capacity criteria. And after further review, none of the non-EFU lands for those six substations satisfy the sign requirements due to slopes, wetlands, zoning conflicts, or lack of proximity to the substation. From a land use perspective, the proposed Remington Energy Storage parcel, EFU parcel, is the only parcel we've seen that's suitable for this project. I wanted to make another statement on battery safety. RWE prides itself on the safety of its facilities. It's our most valued performance criteria in the company.

We want to acknowledge the Turner Fire District's review and comments on our permit application, and we want to state that we intend to fully comply with all requests and requirements outlined in the fire department's correspondence, including all relevant federal and state fire codes. RWE is highly experienced in constructing and operating lithium ion energy storage systems. Presently, we have 16 lithium ion energy storage systems in operation, and several others under construction. The safety of our battery systems and the surrounding community is our top priority. Our facilities use advanced fire detection, suppression, and monitoring technologies, and we are highly experienced in developing detailed emergency response plans and training first responders before the systems go online. We routinely update our safety protocols to meet the latest industry standards, and our systems are designed to detect and respond to issues quickly. While safety incidents are extremely rare, our best practices, design approach, and technology ensure that if a battery were to fail, it would fail safely, preserve as much of our facility as possible, and not impact the surrounding areas. To date, none of our 16 operational facilities have had a failure or a major safety incident. At this point, I'm happy to offer my team to answer any questions about our project. So, I'll turn it over to you. Thank you.

- Jill Foster: Do you feel that your team's is all their statements are all well supported in the record that's been submitted?
- Christina Gisbert: I think so. If you had any specific questions about technology or if you're curious about that sort of thing, then absolutely. That's your opportunity to satisfy that curiosity.
- Jill Foster: Right. I just want to make sure that all their positions are fully included in the record. So, if there's any testimony that you think may not be in their submissions that you want for the record, I think it would be appropriate.
- Ryan Thomas: We have some additional written testimony from the fire and life safety that we're happy to submit during this hearing. But as far as oral testimony goes, I think they're here more to respond to any questions, but we don't need them to affirmatively offer anything.
- Jill Foster: Okay. I don't think I have specific questions because I think learning about it through their submissions is.
- Ryan Thomas: Provided you.
- Ryan Thomas: Plenty of reading material.
- Jill Foster: Provided me plenty of reading material, correct. And each reading material leads to more reading material. OK. So, nobody else you need to have affirmative testimony?

Ryan Thomas: No, that concludes our testimony.

Jill Foster: OK. Mr. Speckman, do you want to be heard on the issue of the ordinance versus the code as it already was on that issue and explain anything about, I think it's 24009, was it 2004 administrative review with the finding on a BESS storage system?

John Speckman: Yeah, I can go into the background there a little bit. That was approved under the idea that these were utility facilities necessary for public service. Some point between then and this application is when we spoke with, I believe it was Alexander Thompson, and we expressed that this is what the county considers them, utility facilities necessary for public service. During that period of time, we received several questions from different companies about these facilities. And when that happened, we decided to go to the board and say, these are coming in, what do you guys think? because of Marion County's stance on solar facilities. We have some of the best farmland in the country, period. We were concerned about commercial operations building on that land with very little criteria and wanted to make sure that the board agreed with what we were calling these things because the implication of approving several won't become apparent for 5 to 10 years.

00:45:00

John Speckman: The board determined that they are not utility facilities for necessary for public service because they fall somewhere between a substation and a field of solar panels. It's not something that the utility is putting in. It's something the utility is saying they can use in the same way that they can use solar panels and other types of natural renewable generation. And Marion County's stance is not that BESS or somehow wrong but that there should be specific criteria. And that is a stance that many counties throughout California and Washington are taking. And a lot of them are just now adopting their code to allow these facilities while taking into account that it is this new territory. It's not power generation, but it is, you know, buying low and selling high of power attached to a substation, providing the service of constant energy and being able to preserve the power generated when the sun is out. But at any rate, our position is that the board made this interpretation. It is our job to follow through with that interpretation. And the board has the right to interpret uses if the legislature and DLCD has not already interpreted them. We think that it's likely that will happen at some point in the near future. But in the meantime, we have started the process for creating code, and we would call it a conditional use, because we don't think it falls under those, that section one of 215-283. Already in that section, it does call, in our interpretation, it does not refer to it as a farm impacts test, but 215-275-5 talks about ensuring that the utility facilities and public service do not cause significant change in cost or change in farm practices. And so, in

our code, instead of summarizing that section, we reference back to the code section under conditional uses that implements the farm impacts test. So, we believe that is just a way to show that, to include that criteria. As far as the ordinance and some of those emails submitted in the exhibit, I can understand how that can be confusing. But what the planning director seemed to be referencing was the fact that the applicant had been told in early June this happened. The Board of Commissioners interpreted them not as a utility facility necessary for public service. We will deny any application that comes in. This was made very aware to the applicant prior to the hearing where that ordinance was adopted. And so, it's clarified again at the hearing, this does not affect the application that's come in. Not to say this application is going to be approved, but rather that it is separate from the ordinance. The reason for denial has nothing to do with the ordinance. It has to do with the county's authority to interpret a use that has not been interpreted by any other authority at this point.

Ryan Thomas: I'd love to respond to a couple of those points. Is now appropriate?

Jill Foster: Yes, now is a great time.

Ryan Thomas: Okay, great. Just three points briefly. The county absolutely gets to establish criteria and standards for BESS, just not on EFU land. Brent v. Washington County describes it's 275 that controls with respect to utility facilities on EFU land. So, we don't take any issue with the county's desire to regulate, provide some standards for potentially, in some zones, prohibit and think it's likely within its rights to do so, just not on EFU. So that's the difference here. Second point, the standard, the test in 275-5 about impacts is actually quite different from the farm impacts test. I understand that it seems pretty similar. I'd like to read it briefly. It doesn't put an affirmative obligation onto an applicant to demonstrate that there aren't impacts. It's, as I noted in my presentation, it's permissive and it would allow the county to impose conditions if there are impacts. So, here it says, I quote, "the governing body of the county or its designee shall impose clear or objective conditions on an applicant or utility facility under 2831 to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to the farm use in order to prevent significant change in accepted farm practices or significant increase in the cost of farm practices on surrounding farmlands." So, if there are any impacts, then there shall be conditions to address those. And then it's limited to significant change in farm practices or significant increase in the cost. And we'll provide a letter from the landowner with 300 acres around the facility saying he supports the project. So, I just wanted to highlight that distinction between the farm impacts test.

Jill Foster: We're not doing a traditional farm impacts test.

00:50:26

Jill Foster:

We're saying if there are impacts, you need to address them.

AR25-015 HO Hearing Audio 2.mp3

[CS1002314]

Jill Foster: Mr. Thomas, are you ready?

Mr. Thomas: Yes.

Jill Foster: Okay, we are back on the record. For clarification, I received 2 submissions. One is for the landowner with the contiguous farmland property, talking about the impacts. Have you received those, Mr. Speckman.

John Speckman: Yes, and we are including these as here in exhibit one and two, the letter and the Q&A.

Jill Foster: You've marked them as exhibits one and two?

John Speckman: Yeah. Okay, that's, okay, exhibits one and exhibit 2 will be admitted. Q&A, those are admitted into the record. Okay, I think somebody else wanted to testify, but was there any further testimony you'd like to provide at this time?

Mr. Thomas: And I'll have a chance after any further comments, correct?

Jill Foster: Yes.

Mr. Thomas: I'm happy to save it until the end.

Jill Foster: OK. Mr. Stevenson that wanted to testify? All right. Where would you like to go? Do you-- let's see. I think-- Yeah, why don't we do that? Just pull up another chair. Just need to be by a microphone so we can pick it up.

Brent. Stevenson: Okay.

Jill Foster: All right. Mr. Stevenson, do you swear or affirm that the testimony you will give in this proceeding will be true to the best of your knowledge?

Brent Stevenson: I do.

Jill Foster: Please state your name, spell your last name for the record, and provide your mailing address.

Brent Stevenson: That's Brent Stevenson, S-T-E-V-E-N-S-O-N. And I'm the manager of Santiam Water Control District. Mailing address, 284 East Water Street, Stayton, Oregon, 97383.

Jill Foster: Thank you. Please proceed.

Brent Stevenson: Yeah, I just wanted to give a little bit of a comment. We did put record We did put comments on the record from our legal representation, but listening to some of the testimony, I think just wanted to refute the assumption that there's no economic cost to the surrounding farm grounds. The district is an ORS 553 district. We serve irrigation water to 17,000 acres in the area, and also the subject landowner has contracts with the district. We enter into written recorded contracts with all of the landowners that have water rights from the district. And we have rules and regulations for all of those members under the ORS 553 statute related to We weren't involved very early on in the process, but attempted to give some constructive conditions that the district felt would protect the farming practices and district infrastructure related to the project. And so, we feel that those are important conditions to consider as part of the record if you do not want to have economic damages to the district. We have a TMDL plan and requirements under DEQ for water quality components related to stormwater discharges into surrounding streams and water bodies. And so, the district farmers and local farm community are responsible through the district to ensure that water quality and water conditions are met. As well, the water rights on the property, the rights are held. The certificate is issued to the irrigation district, and then we contract and place those water rights on farm grounds surrounding. Being a district asset, they are a pertinent to the lands and specific to the land ownership. And so, we have concerns that those water rights could be lost from forfeiture or other if they're not transferred properly. And so, that needs to be through land ownership. The district can't transfer on their own. They need to have permission from the landowner and acceptance in those application proceedings. Any loss of a water right has a long-term financial impact on the district. It's the sum of all of those 17,000 acres that support the function of the district. And so, those water rights are critical and there are no more available for the North Santiam Basin. That was all.

Jill Foster: Mr. Thomas, you'd like to respond to that?

Mr. Thomas: Thank you. With respect to the water rights, you know, as Remington, as the applicant here, doesn't own, have water rights, doesn't control those. As I understand it, I'm not a water law expert, but I understand that those are owned by the property owner and water law is governed by water law. What he does with them, his rights, his abilities, and I'm not privy to his relationship with the district. I'm not seeing a basis for conditions for this application under 283-1 and 275-5 to step into that relationship and try to mandate what he should or should not do with respect to that. And I think those are best left to the existing framework with respect to water law. Regarding environmental quality, we certainly understand and respect that there are environmental standards that the project would comply with respect to stormwater discharge the extent there needs to be detention on sites, the site plan does provide for stormwater detention, that would all be

again governed by a separate framework regarding environmental quality and water.

**Testimony from John J. Audley**  
**In Support of AR 25-015 Application to Site a Battery Energy Storage System in Marion County on EFU Land as a Utility Facility Necessary for Public Service**

**Public Hearing November 6, 2025**

**I. Background**

My name is John J. Audley, and for twenty years I have worked in Oregon in policy and government relations. One of my areas of expertise is energy policy. Since 2008, I have contributed to the creation and implementation of numerous clean energy policies throughout the Northwest. I was deputy director at Renewable Northwest and served as administrator of policy at the Oregon Department of Energy. Among my current and former clients are national and international energy companies working in the Pacific Northwest, including RWE.<sup>1</sup>

Based this expertise, I offer the following testimony as evidence that energy storage systems have become integral to the way Oregon's independently owned utilities provide services to Oregon customers. Building off eighty years of active energy policy shaping the State's energy mix, Oregon is using energy policies to better prepare the State to generate and store energy for a more uncertain energy future.

**II. Oregon is a National Leader in Energy Policy**

For nearly a century Oregon policymakers have used policy to promote a broad array of electricity sources to meet the energy needs of the State.<sup>2</sup>

- **Hydropower:** With the passage of the Bonneville Project Act in 1937, the United States Congress put Oregon and the Pacific Northwest on a path to generate most of its energy by harvesting hydropower. Oregon's first renewable portfolio standard included hydropower as a renewable energy. Congress passed the Pacific Northwest Electric Power Planning and Conservation Act (also known as the NW

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<sup>1</sup> My professional history and curriculum vitae can be found at <https://www.jjaconsults.com/> and is available as Exhibit 1 to this comment.

<sup>2</sup> For a comprehensive review of Oregon's energy policies, see the attached report titled *Oregon's Energy History* (2020) prepared by the Oregon Department of Energy, available as Exhibit 2 and also at: <https://www.oregon.gov/energy/Data-and-Reports/Documents/2020-BER-Energy-History.pdf>

Power Act) in 1980, directing the newly established Pacific Northwest Electric Power and Conservation Planning Council (later named NW Power and Conservation Council), to adopt a regional energy conservation and electric power plan, as well as a program to protect, mitigate, and enhance fish and wildlife affected by hydropower on the Columbia River and its tributaries.

- **Nuclear:** In the 1940s, the Hanford Nuclear facility became the world's first plutonium production reactor, spurring regional nuclear power development into the 1970s.
- **Natural Gas:** Jordan Cove and Pacific Connector pipeline were proposed in 2006 as a liquid natural gas (LNG) import terminal in Coos County, OR.
- **Coal:** In 1996 the State approved the 550 MW Boardman Coal Plant proposed by Portland General Electric.
- **Renewable Energy:** In 1997, Oregon became the first state to establish a price on carbon, requiring power plants to avoid, displace, or sequester a portion of their CO2 emissions. In 2001, the EFSC-approved Stateline Wind Project in Umatilla County becomes first utility-scale wind energy facility built in Oregon. In 2007 the Oregon legislature passed SB 838, requiring the state's largest utilities to provide 25 percent of retail sales from eligible renewable sources by 2025. In 2016, Oregon adopted a 50% renewable portfolio standard. And in 2020, Oregon Governor Kate Brown issued Executive Order 20-04 Directing State Agencies to Take Actions to Reduce and Regulate Greenhouse Gas Emissions.

### **III. Oregon is Developing a Comprehensive Energy Strategy – and Energy Storage Systems are Part of that Strategy**

Until recently, the product of these various energy policies has been a comparatively diverse and relatively inexpensive array of energy sources to meet the energy needs of Oregonians.<sup>3</sup> However, concerns over climate, the frequency of catastrophic events, and growing concerns over the risks to energy systems and national security prompted Oregon

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<sup>3</sup> ODOE has an interactive map that shows the different percentages of energy and their sources. An excerpt of the map is attached as Exhibit 3, but is also available at: [https://public.tableau.com/views/PowerProductionOregon2023/OREGONERM?:language=en-US&embed=y&:sid=&:redirect=auth&:embed\\_code\\_version=3&:loadOrderID=0&:display\\_count=y&publish=yes&:origin=viz\\_share\\_link](https://public.tableau.com/views/PowerProductionOregon2023/OREGONERM?:language=en-US&embed=y&:sid=&:redirect=auth&:embed_code_version=3&:loadOrderID=0&:display_count=y&publish=yes&:origin=viz_share_link).

and other states to develop plans to promote more resilient energy systems at the regional, state, and local level. The Oregon Department of Energy (ODOE) published the inaugural Oregon Energy Security Plan in September 2024 following direction from the Oregon legislature pursuant to SB 1567.<sup>4</sup> The plan identifies risks to electric, liquid fuel, and natural gas/propane systems, and proposes ways to mitigate those risks. ODOE expects to update the plan annually to reflect the latest data and information. According to ODOE:

“A resilient energy system is one that can recover quickly after a disruption like a Cascadia Subduction Zone earthquake, a sea level rise such as a storm surge, or heightened forest fire dangers . . . Our programs support projects that boost resilience, such as distributed generation, marine energy, and energy storage. ODOE is also working with other state and local agencies and stakeholders to assess the current risks to our energy system, and how we would respond.”<sup>5</sup>

In 2023, the Oregon legislature established a grant program designed to support efforts by Oregon counties to develop and implement energy resilience plans. One element of that planning includes mapping the energy infrastructure within the county, including energy system storage facilities.<sup>6</sup> According to ODOE energy storage also improves the resiliency of the power grid.<sup>7</sup>

Eugene Water and Electric (EWEB) installed its own battery backup system as part of its response to electricity reliability challenges.<sup>8</sup>

#### **A. Towards the Creation of an Oregon Energy Strategy:**

In 2023 the Oregon legislature instructed ODOE to develop an energy strategy that would assist the State in its efforts to realize its energy goals.<sup>9</sup> A robust process involving public outreach to stakeholders across the state was initiated in 2024, and the first draft of the

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<sup>4</sup> See Exhibit 4, Senate Bill 1567, also available at:

<https://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/SB1567>

<sup>5</sup> See Exhibit 5, ODOE, Safety and Resilience, Energy System Resilience, also available at:

<https://www.oregon.gov/energy/safety-resiliency/Pages/Resilience.aspx>.

<sup>6</sup> See Exhibit 6, ODOE, Safety and Resilience, County Energy Resilience Grant Program, also available at:

<https://www.oregon.gov/energy/safety-resiliency/Pages/County-Resilience.aspx>.

<sup>7</sup> See Exhibit 7, ODOE, Safety and Resilience, Energy Storage, also available at:

<https://www.oregon.gov/energy/safety-resiliency/Pages/Energy-Storage.aspx>.

<sup>8</sup> See Exhibit 8, Oregon Resilience Case Study, Business Continuity Planning, DERS & Microgrids, also

available at: <https://www.oregon.gov/energy/safety-resiliency/Documents/DERS-Microgrids-Case-Study.pdf>

<sup>9</sup> See Exhibit 9, House Bill 3630, also available at:

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>.

plan was released for comment in August 2025. A final report will be submitted to the Oregon legislature in November 2025.<sup>10</sup>

Among its anticipated components will be recommendations to increase the use of energy storage systems to promote greater system resiliency and reliance upon locally produced electricity.

**B. Oregon’s Largest Utilities Have Integrated Battery Storage into their Integrated Resource Planning:**

In 2015, the Oregon legislature required both PGE and PacifiCorp to acquire at least one energy storage system.<sup>11</sup> Both PGE and PacificCorp have submitted compliance filings to the Oregon Public Utility Commission (PUC):

PacifiCorp PUC Filing: UM1857<sup>12</sup>

Portland General Electric PUC Filing: UM1856<sup>13</sup>

Considering the focus of this proceeding, it is interesting to note that all pilot energy system storage projects proposed by both PGE and PacifiCorp are in the North Willamette Valley. PGE has signed an agreement with the Oregon Military Department to provide services to one of its facilities in Oregon.

Both PacifiCorp and PGE have integrated battery storage their Clean Energy Plans.<sup>14</sup> To underscore how policy shapes these utilities energy acquisition, I have selected a few quotes from PacifiCorp’s IRPs:

PacifiCorp’s 2025 CEP Key Findings include:

“To meet ambitious HB 2021 decarbonization targets, the 2025 CEP preferred portfolio includes 11,837 megawatts (MW) of new proxy resources to serve Oregon

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<sup>10</sup> See Exhibit 10, ODOE, Data & Reports, Oregon Energy Strategy, also available at:

<https://www.oregon.gov/energy/Data-and-Reports/Pages/Energy-Strategy.aspx>.

<sup>11</sup> See Exhibit 11, House Bill 2193, also available at:

<https://olis.oregonlegislature.gov/liz/2015R1/Downloads/MeasureDocument/HB2193>

<sup>12</sup> See Exhibit 12, PacifiCorp’s Compliance Filing, Docket UM 1857, also available at:

<https://edocs.puc.state.or.us/efdocs/HAD/um1857had333292114.pdf> and

<https://apps.puc.state.or.us/edockets/docket.asp?DocketID=20915>

<sup>13</sup> See Exhibit 13, Portland General Electric Company, Draft Storage Potential Evaluation Filing, Docket UM

1856, also available at: <https://edocs.puc.state.or.us/efdocs/HAD/um1856had162631.pdf>

<https://apps.puc.state.or.us/edockets/docket.asp?DocketID=20913>

<sup>14</sup> PacifiCorp’s plan is available at: <https://www.pacificcorp.com/energy/oregon-clean-energy-plan.html>.

PGE’s plan is available at: <https://portlandgeneral.com/about/who-we-are/resource-planning/combined-cep-and-irp>

over the 21-year planning period, including: 2,491 MW of wind; 2,152 MW of utility-scale solar; 1,032 MW of small-scale solar; 3,835 MW of storage resources; 2,045 MW of energy efficiency; and 153 MW of demand response.

In the near-term, Oregon will require 153 MW of new renewable resources and 186 MW of storage resources before 2030. Between 2030 and 2034, there is an additional need of 2,694 MW of new utility-scale renewable resources, 326 MW of new small-scale renewables and 757 MW of new storage resources.

If compliance with HB 2021 requires Oregon load to be served on an hourly, as opposed to annual basis, Oregon might require an additional 12 GW of non-emitting and storage resources over the planning horizon to comply with HB 2021”<sup>15</sup>

#### **IV. Conclusion**

In conclusion, building off eighty years of active energy policy shaping the State’s energy mix, Oregon is using energy policies to better prepare the State to generate and store energy for a more uncertain energy future. As the customer service provider, utilities must not only meet these policy objectives but do so in a way that continues to provide its customers with the least cost, least risk electricity product. To plan for that future, consistent with both policy mandates and customer demand large utilities are integrating electricity storage systems into their infrastructure planning and development, making them instrumental for conducting business and meeting policy requirements.

If you have any questions, please don’t hesitate to contact me.

Sincerely,



John J. Audley

[john@jjaconsults.com](mailto:john@jjaconsults.com)

971-203-3248

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<sup>15</sup> See PacifiCorp’s Clean Energy Plan Engagement Series Meeting August 20, 2025 at 13. Available at: [https://www.pacificpower.net/content/dam/pccorp/documents/en/pacificpower/community/or-clean-energy-plan/OR\\_CEP\\_Meeting\\_2025-08\\_August\\_Slides.pdf](https://www.pacificpower.net/content/dam/pccorp/documents/en/pacificpower/community/or-clean-energy-plan/OR_CEP_Meeting_2025-08_August_Slides.pdf)

# JOHN J. AUDLEY CONSULTING

*Excels at defining and delivering successful outcomes in complex environments -- Talent for communicating complex ideas to a wide audience -- Expertise in Oregon housing, natural resource, economic development, and energy policies.*

## PROVEN ABILITY AND RESULTS

### Success in Local, State, and National Political Environments

- Secured \$5MM in state funds to support an innovative affordable housing loan program
- Secured \$5MM in state funds to launch a pilot project to build modular houses made from mass timber products
- Forged bi-partisan support and funding for an affordable loan program to help families replace failed septic systems -- \$10MM in state funding secured over four legislative sessions
- Passed major energy legislation in Montana, Washington, and Oregon
- Built markets for biomass by expanding its eligibility as a fuel stock under Washington and Oregon's renewable energy laws

### Sustainable, Successful, Organizational Leadership

- Built and maintained an independent consulting company, now in its ninth successful year
- Managed as many as 25 direct reports and forty indirect reports
- Oversaw the Oregon Department of Energy policy development and implementation
- Led Sustainable Northwest through transition from founding executive director
- Created new policy programs at two national environmental organizations and two international policy organizations.
  - One of those programs was established in Brussels, Belgium

## RELEVANT WORK EXPERIENCE

- **John Audley Consulting**, July 2015 to present
  - *Clients include the Oregon Business Council, Craft3, Vision To Learn, Capital Power, Hacienda CDC, and the Washington Department of Natural Resources*
- **Sustainable Northwest, President. 2013-2015**
- **Oregon Department of Energy, Policy Administrator, 2012-2013**
- **Renewable Northwest Project, Deputy Director, 2008-2012**
- **The Nature Conservancy in Oregon, Federal Government Relations, 2007-2008**
- **The German Marshall Fund of the United States, European Fellow, 2003-2006**
- **Carnegie Endowment for International Peace, Founder and Director Trade, Equity and Development Policy Program, 2001-2003**
- **United States Environmental Protection Agency, Trade Program Coordinator, 1998-2001**

## PUBLIC SERVICE

- *Staffed Governor Kate Brown's Council on Wildfire Response, 2018-19*
- *Board Member, PECL, 2017 to 2020*
- *Board Member, The Climate Trust, 2013 to 2016*
- *Board Chair, Sustainable Northwest Wood, 2013-2015*
- *Working Forest Landscape, Oregon State University School of Forestry, 2014-15*
- *Steering Committee, Strategic Health Impact Assessment on Wind Energy Development in Oregon, Oregon Health Authority, 2012.*
- *Oregon Sage Grouse Advisory Committee, 2010-2012*

## EDUCATION

- *The University of Maryland, Ph.D, political economy*
- *The University of Arizona: BA, political science, MA, political science*
- *The American Graduate School of International Management, Masters in International Business Management*

## SELECTED PUBLICATIONS

With Martin Doyle, **Securing Oregon's Water Future**. 2022. Oregon Business Council Report.

**Importance of Water in the North Santiam Watershed**; an Economic Description. 2019. EcoNorthwest (organized by Oregon Business Council).

with Scott Campbell, **Work in Eastern Oregon is Tied to the Land**, Oregonian op ed, 2014

with Mike MacArthur, **Wildlife Officials Should Involve Public in Sage Grouse Plan**, Bend Bulletin, op ed, 2010

### **Publications from The Carnegie Endowment**

**Green Politics and Global Trade: NAFTA and the Future of Environmental Politics.1997**; Georgetown University

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Consulting.

# OREGON'S ENERGY HISTORY

We hope this timeline of Oregon's energy history will serve as a useful reference for readers as they review sections of this report, especially where we discuss energy data over time.

There are six notable entries from just the last two years — what will be added by the time we publish the 2022 *Biennial Energy Report*?

Energy history is being made.

## Introduction

Oregon's energy system has evolved based on the state's natural resources and in response to events like technology development and energy crises. Native American tribes, as the original inhabitants of Oregon, have had their land base significantly diminished or completely removed – this altered the way natural resources were traditionally managed and has resulted in an enduring change in the landscape that influences the options for our energy system today. Over time, deliberate policy choices helped create not only our energy system but also shaped our society. In order to help shed light on how we got to where we are today, this timeline includes a number of events that unfolded over time and policy choices that Oregon's leaders and citizens have made in response to these events. A better understanding of how we got to where we are can help us more effectively manage the energy opportunities and challenges of today and tomorrow.

*Indigenous tribes and bands have been with the lands that we inhabit today in the Willamette Valley and throughout Oregon and the Northwest since time immemorial. It is impossible to understand Oregon or U.S. history, geography, or government without having essential understandings of the rich culture and contributions of Native peoples. We would like to express our respect to the First Peoples of this land, the nine federally recognized tribes of Oregon: Burns Paiute Tribe, Confederated Tribes of Coos, Lower Umpqua & Siuslaw, Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation, Coquille Indian Tribe, Cow Creek Band of Umpqua Tribe of Indians, and Klamath Tribes. ODOE's office is in Salem, Oregon, the land of the Kalapuya, who today are represented by the Confederated Tribes of the Grand Ronde and the Confederated Tribes of the Siletz Indians, and whose relationship with this land continues to this day.*

## Timeline of Oregon's Energy History

-  Event
-  Energy policies enacted at state and federal levels

-  18,000 to 15,000 years ago – During the last ice age, the Missoula Floods, possibly the largest discharges of water in the history of the earth, shape the Columbia River Gorge and the Willamette Valley.<sup>1</sup>
-  16,500 years ago – Archeological remains and artifacts – the oldest radiocarbon dated evidence of humans in North America – are found where Cooper's Ferry, ID, now stands. This region is also known to the Nez Perce Tribe as the site of an ancient village named Nip.<sup>2</sup>

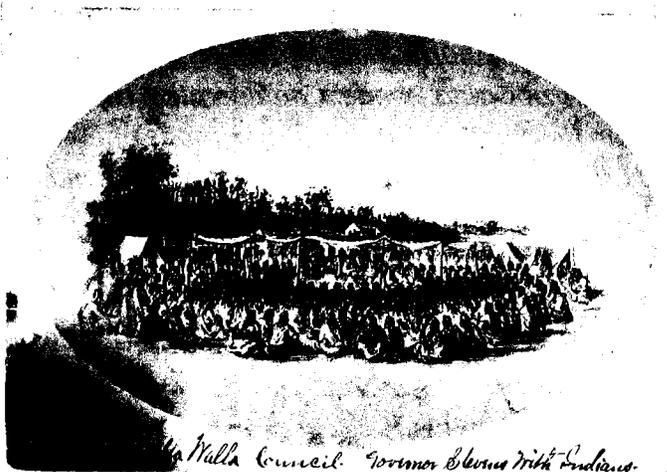


Missoula Flood Paths, courtesy of Washington Geological Survey.

Over 6,000 years ago – Archeological evidence shows Northwest Indians fishing for salmon at Kettle Falls on the upper Columbia River.<sup>3</sup>

1700 – On January 26th, a magnitude 8+ earthquake occurs along the Cascadia Subduction Zone, causing a tsunami that floods coastal communities in Oregon. Knowledge of these events appears in Tribal oral history. This is the most recent Cascadia earthquake, which have happened about 234 years apart on average over the last 10,000 years.<sup>4</sup>

1855 – U.S. Government signs Treaty of Wasco, Columbia River, Oregon Territory with the Taih, Wyam, Tenino, & Dock-Spus Bands of the Walla-Walla and the Dalles, Ki-Gal-Twal-La, and the Dog River Bands of the Wasco who are forcibly removed to reservations.<sup>5</sup> The Treaty of 1855 reserved and guaranteed the right to continue to take fish on both their reservations and at all “usual and accustomed fishing places.” This Treaty continues to provide legal foundation for securing and furthering fishing rights for contemporary members of the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe.<sup>6</sup>



“The exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, in common with citizens of the United States.”<sup>7</sup> - *Excerpt from the Warm Springs treaty*

Left- Gustav Sohon's depiction of the 1855 treaty gathering, courtesy of the Washington State Historical Society.

1859 – Oregon becomes the 33rd state.<sup>8</sup>

1860 – Portland Gas Light Co. lights up part of downtown with gas streetlights from coal gas. It becomes Northwest Natural Gas Company in 1958.<sup>9</sup>

1878 – The Wadatika Band of Northern Paiutes abandon the Malheur Reservation to escape conflict. Upon return, the reservation becomes “Public Domain” and tribal members establish a makeshift encampment on the outskirts of the town of Burns, OR. The Burns Paiute Tribe, descendants of the Wadatika Band, regains reservation land in Harney County in 1972.<sup>10</sup>

1879 – Thomas Edison invents the light bulb.<sup>11</sup>

1883 – American inventor Charles Fritts creates the first working selenium solar cell – the ancestor of modern solar cells.<sup>12</sup>

1889 – The first long-distance transmission line in North America is energized between the generating station at Willamette Falls in Oregon City and Portland.<sup>13</sup> Three years later, the Willamette Falls Electric Company becomes Portland General Electric (PGE).<sup>14</sup>

1889 – McMinnville Water and Light becomes Oregon’s first municipally-owned utility.<sup>15</sup>

1890-1910 – Coal mining occurs in Coos Bay area, the only area in Oregon to produce coal commercially.<sup>16</sup>

1910 – Pacific Power & Light is formed from the merger of several financially troubled utilities in the Pacific Northwest. PP&L eventually becomes PacifiCorp.<sup>17</sup>



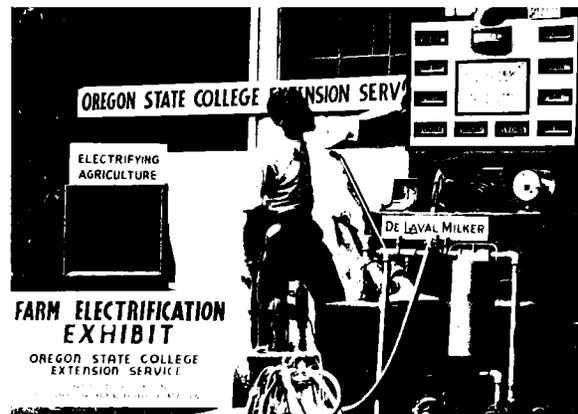
1911 – Public Utility Act of 1911 in Oregon extends the jurisdiction of the existing Railroad Commission to utilities and transportation regulation.<sup>18</sup>

1914-1918, World War I – Newly electrified industries in the northwest, including shipbuilding, lumber, machinery, and woolens, help fuel America’s contribution to the allied victory in World War I.<sup>19</sup>

1919 – Oregon passes the first per-gallon tax on gasoline, at a rate of one cent per gallon.<sup>20</sup>

1920 – Congress passes the Federal Water Power Act, which creates the Federal Power Commission to regulate the construction, operation, and maintenance of non-federal hydroelectric power projects. The Federal Power Commission becomes the Federal Energy Regulatory Commission (FERC) in 1977.<sup>21</sup>

1935 – President Roosevelt establishes the Rural Electrification Administration by Executive Order. The next year, Congress passes the Rural Electrification Act, providing funding to bring electricity to farms.<sup>22</sup> In a speech two years later at the dedication of a new electric cooperative (or co-op), Roosevelt states, “Electricity is a modern necessity of life, not a luxury.”<sup>23</sup> At the time, only 27 percent of Oregon farms have electricity. By 1940, 59 percent of farms in Oregon have electricity.<sup>24</sup>



Milk machine exhibit as part of OAC Extension Service’s Farm Electrification Exhibit, 1950-1959, courtesy of OSU.

1937 – Congress passes the Bonneville Project Act and creates a temporary agency, the Bonneville Power Project, to market and transmit power from federal hydropower projects and “give preference and priority” to public bodies and cooperatives. Construction of Bonneville Dam is completed in 1938.<sup>25</sup> The Bonneville Power Project is renamed the Bonneville Power Administration in 1940.<sup>26</sup>

1940 – First aluminum smelter in the northwest, owned by the Aluminum Company of America (Alcoa) near Vancouver, WA becomes operational. Attracted by an abundance of low-cost electricity, more than a dozen aluminum plants across the northwest support the production of warplanes for World War II. Aluminum smelters buy electricity directly from Bonneville, becoming known as direct service industries or DSIs.<sup>27</sup>

1941 – Grand Coulee Dam, the largest concrete structure ever built at the time, begins operation. It is estimated that electricity from this dam provides enough power to produce the aluminum in about one-third of the planes built during World War II.<sup>28</sup> The construction inundates an important, historic fishing ground at Kettle Falls under Lake Roosevelt in Washington state. The three-day gathering before the falls are flooded is called the Ceremony of Tears. A First Salmon Ceremony, to call salmon back, continues to be held at Kettle Falls even though construction of the dam ended migration of salmon.<sup>29</sup>



Left- Colville women, Ceremony of Tears, 1939, courtesy of UW Special Collections. Above- Modern day salmon ceremony at Kettle Falls, courtesy of The Nelson Daily.

1944 – The world’s first plutonium production reactor begins operations at the Hanford site, near Richland, Washington, as part of the Manhattan Project. This site is approximately 30 miles from Oregon along the Columbia River. Plutonium production ended in 1989, and the Hanford site is now one of the largest and most expensive cleanup sites in the country.<sup>30</sup>

1946 – Congress passes the Atomic Energy Act of 1946, establishing the Atomic Energy Commission. The AEC would take over responsibility of United States nuclear development from the Manhattan Engineer District. The purpose of the AEC is to promote the use of atomic energy for peaceful purposes.<sup>31</sup>

1954 – The Western Oregon Indian Termination Act terminates federal recognition of 61 tribes. The Klamath Termination Act terminates federal recognition of the Klamath Tribes.<sup>32</sup> After many years of work by tribal members, federal recognition of these tribal governments is restored: Confederated Tribes of Siletz Indians (1977), Cow Creek Band of Umpqua Tribe of Indians (1982), Confederated Tribes of Grand Ronde (1983), Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (1984), the Klamath Tribes (1986), and Coquille Indian Tribe (1989).<sup>33</sup>

1954 – Two Oregonians, Daryl Chapin and Gerald Pearson, both graduates of Willamette University, help invent the first solar cell using silicon.<sup>34</sup>

Solar technology inventors Gerald L. Pearson, Daryl M. Chapin, and Calvin S. Fuller, courtesy of solarcellcentral.com



1954 – Congress passes the Atomic Energy Act of 1954, permitting private ownership of nuclear materials and the sale of nuclear power.<sup>35</sup>

1957 – Construction of The Dalles Dam is completed. While the project contributes to flood control, navigation, power generation, and irrigation, it also submerges Celilo Falls, an important Native American fishing area with settlements and trading villages in the oldest continuously inhabited place in the region.<sup>36</sup>

1959 – An amendment to the Federal Atomic Energy Act allows states to control radiation hazards. Oregon subsequently enters into an agreement with the federal government under which the state assumed certain regulatory authority.<sup>37 38</sup>



1961 – Nick Holonyak Jr., employed at General Electric, develops the first light-emitting diode that emitted light in the visible part of the frequency range. It was a red LED.<sup>39</sup>

1964 – The United States and Canada implement the Columbia River Treaty to provide flood control and optimize hydropower generation within the Columbia River Basin.<sup>40</sup>

1969 – In *U.S. v. Oregon* the U.S. District Court rules that the Nez Perce, Umatilla, Warm Springs, and Yakama tribes that negotiated the Treaty of 1855 have “an absolute right” and are entitled to “a fair share” of the fish produced by the Columbia River system.<sup>41</sup> This continues to be an on-going Federal court proceeding and fisheries in the Columbia River have been managed subject to provisions under the jurisdiction of the federal court.<sup>42</sup>

1969 – Governor McCall establishes the Nuclear Siting Task Force of the Nuclear Development Coordinating Committee by Executive Order. The Task Force is created to approve the location of nuclear power plants consistent with Oregon’s environmental protections.



1970 – Congress passes the Clean Air Act to protect public health and welfare from air pollution from power plants, motor vehicles, and industrial facilities.<sup>43</sup>



1971 – The Oregon Legislature creates the Nuclear and Thermal Energy Council to regulate the siting of nuclear and coal-fired generating plants larger than 200 megawatts. This Council eventually becomes Energy Facilities Siting Council (EFSC) in 1975.<sup>44</sup>



1971 – The 1,130 MW Trojan Nuclear Power Plant proposed by PGE in Columbia County receives a site certificate from the Nuclear and Thermal Energy Council.<sup>45</sup>



1973 – Arab oil embargo leads to a quadrupling of oil prices, rationing of gasoline, and eventually efforts by U.S. policymakers to reduce the country's dependence on foreign oil.<sup>46</sup>



Portland during the early morning hours of pumping when gas was limited to five gallons per car on a first-come, first served basis, courtesy of David Falconer/EPA/US National Archives.

"The 1973 Oil Embargo acutely strained a U.S. economy that had grown increasingly dependent on foreign oil. The efforts of President Richard M. Nixon's administration to end the embargo signaled a complex shift in the global financial balance of power to oil-producing states and triggered a slew of U.S. attempts to address the foreign policy challenges emanating from long-term dependence on foreign oil." - *U.S. Department of State, Office of the Historian.*<sup>47</sup>



1973 – President Nixon establishes the Federal Energy Office within the Office of the President to help coordinate the American response to the Arab oil embargo. This office evolved into the Federal Energy Administration the following year, before becoming part of the newly established U.S. Department of Energy in 1977.<sup>48</sup>



1973 – The Oregon Legislature passes SB 100 creating a comprehensive land use planning system in the state.<sup>49</sup> Land use planning shapes the development of Oregon's landscape, affecting everything from transportation patterns to how energy facilities are sited in Oregon.



1973 – Congress passes the Endangered Species Act to provide for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend.<sup>50</sup>



1973 – The Oregon Office of Energy Research and Planning writes the first Biennial Energy Plan (now known as the Biennial Energy Report), called “Transitions: A Book on Future Energy).<sup>51</sup>



In his introduction to the 1977 reprint of this report, Governor McCall wrote, “As governor of Oregon at the time this document was prepared, I believed that there was a role in state government for bold new ideas and for innovative, long-range planning. I was aware of the controversy which would surround this report, but I also knew that Oregon had just experienced its first dramatic energy crisis and that we needed new planning tools that would help us better understand and modify the relationships between energy and our natural and human systems... Transition is a bold document. It challenges the people of this state to create their own future rather than having it arbitrarily imposed upon them, by special interests and external events. I knew the people of Oregon could respond to such a challenge. They had already responded gallantly with dramatic conservation achievements during the energy crisis of 1973-74.”<sup>52</sup>

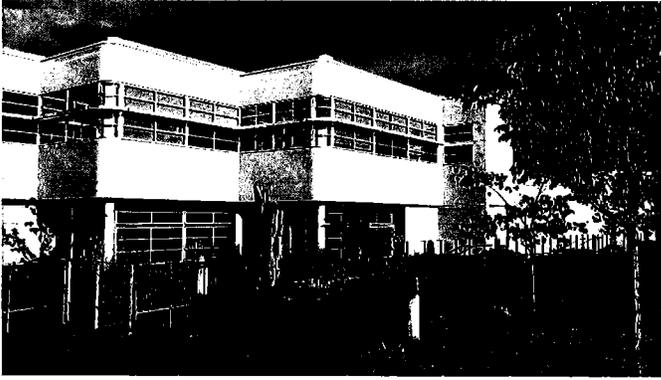
1974 – Oregon Uniform Building Code first includes thermal insulation requirements for buildings.<sup>53</sup>

1974 – In *U.S. v Washington* the U.S. District Court rules in Washington that the Nez Perce, Umatilla, Warm Springs, and Yakama tribes’ “fair share” means half of the harvestable fish in the Columbia River. The Ninth Circuit Court of Appeals later upheld this decision in 1975.<sup>54</sup>

1975 – Congress passes the Energy Policy Conservation Act (EPCA), creating the Strategic Petroleum Reserve, Corporate Average Fuel Economy (CAFE) standards for cars and light trucks (18 mpg for model year 1978), state energy conservation programs, and energy efficiency targets for consumer products. To reduce U.S. dependence on oil, the law also creates incentives for coal mining and calls for conversion of oil and gas facilities to coal.<sup>55</sup>

1975 – Lower Granite Dam on the Snake River and Libby Dam on the Kootenai in Montana, the last of the mainstem dams on the Federal Columbia River Power System, are constructed.<sup>56</sup>

1975 – Oregon Legislature creates the Oregon Department of Energy and the Energy Facility Siting Council. EFSC is charged with overseeing the siting, construction and operation energy facilities in a manner consistent with the protection of public health and safety and in compliance with the energy policy while protecting Oregon’s environment. The department is formed to promote energy conservation and development of renewable energy sources and to provide staff support for EFSC.



Current day Oregon Department of Energy offices and the Energy Facility Siting Council visiting the Boardman Solar Energy site.

Emerging from the energy shortages of the early 1970s, Oregon policymakers were focused on energy scarcity, energy independence, and the influence that Oregonians could have over their energy futures. The themes of scarcity, sustainability, energy efficiency, and energy education are embedded in ODOE's authorizing statute (ORS 469.010), passed in 1975. The two findings contained in the statute are: "The Legislative Assembly finds and declares that:

- o Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.
- o It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution, and utilization."<sup>57</sup>

1975 – EFSC approves the 550 MW Boardman Coal Plant proposed by PGE in Morrow County. The Plant is eventually constructed and placed into service in 1980.<sup>58</sup>

1976 – Commercial operation begins at PGE's Trojan Nuclear Power Plant; at 1,100 MW it is the largest plant of its kind at the time. The plant is licensed to run for 30 years.<sup>59</sup>

1977 – The Yakama, Umatilla, Warm Springs, and Nez Perce tribes form the Columbia River Inter-Tribal Fish Commission (CRITFC) for the purpose of reversing the decline of salmon, lamprey, and sturgeon, protecting fishing rights, sharing salmon culture, and providing fishery services.<sup>60</sup>



Yakama Chairman Watson Totus signed the CRITFC constitution on behalf of his tribe in 1977, courtesy of [www.critfc.org](http://www.critfc.org).

1977 – Congress passes the Department of Energy Organization Act, creating the U.S. Department of Energy and bringing together federal energy activities under one agency.<sup>61</sup>

1978 – Congress passes National Energy Conservation Policy Act, which establishes the federal Residential Conservation Service, requires large electric and natural gas utilities to provide residential energy audits to their customers, creates a matching grant program providing funding for energy audits and energy saving retrofits in nonprofit institutional buildings (colleges, schools, and hospitals), requires that some appliance efficiency targets become mandatory, and encourages lending institutions to offer extended mortgage credit for the purchase of energy efficient homes.<sup>62</sup>

1978 – Oregon’s Residential Energy Tax Credit begins. The following year, the Business Energy Tax Credit begins.<sup>63</sup>

1979 – Accident at Three Mile Island nuclear plant in Pennsylvania draws worldwide attention and focus on nuclear power and its potential safety issues.<sup>64</sup>

1980 – Oregon voters pass an initiative 53-47 percent that prohibits the licensing of a new nuclear power plant unless it is approved by the voters and only if there is a permanent repository licensed by the federal government for disposal of high-level radioactive waste. There is still no permanent repository for disposal of high-level radioactive waste in the US.<sup>65</sup>

1980 – Congress passes the Pacific Northwest Electric Power Planning and Conservation Act (also known as the NW Power Act). The Act establishes the Pacific Northwest Electric Power and Conservation Planning Council (later named NW Power and Conservation Council), and directs the Council to adopt a regional energy conservation and electric power plan, as well as a program to protect, mitigate, and enhance fish and wildlife affected by hydropower on the Columbia River and its tributaries. It also establishes provisions that the BPA Administrator must follow in selling power, acquiring resources, implementing energy conservation measures, and setting rates.<sup>66</sup>

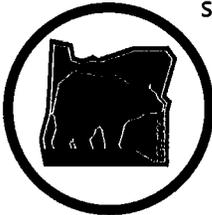
According to the NW Power and Conservation Council, a critical factor to passing the NW Power Act was the region’s “disastrous” efforts, led by the Washington Public Power Supply System (WPPSS, or “Whoops) and Bonneville Power Administration, to build five nuclear power plants in the 1970s. “Utilities based their decision in part on inaccurate Northwest electricity load forecasts. Only one of the plants, the currently operating Columbia Generating Station, was ever completed. Due to exorbitant cost overruns, utilities abandoned or mothballed the other four plants prior to completion. Two of the unfinished plants were responsible for one of the largest bond defaults in the history of the nation, while the Bonneville Power Administration backed the financing for the other three plants. And, from 1978 to 1984, BPA was forced to raise its rates by 418 percent (adjusted for inflation) to pay for the cost of these plants. Even today...BPA pays millions of dollars a year on debt service for two of the unfinished plants.”<sup>67</sup>



Unfinished WPPSS Unit 5 near Satsop, WA, courtesy of [www.historylink.org](http://www.historylink.org).

1983 – EFSC approves its first renewable energy project, a 40 MW (850 40-80 kW turbines) proposal by Wind Energy Specialist for a site in Curry County. This facility was never constructed.

1983 – Northwest Power Planning Council produces Model Conservation Standards for the region, including guidance for energy efficiency codes and conservation programs. The model asserts that “to ensure that the region captures all regional cost-effective savings, utilities should secure proportional savings from hard to reach populations.”<sup>68</sup>



1984 – Through a ballot measure, voters in Oregon create the Oregon Citizens’ Utility Board (CUB) to advocate on behalf of residential customers of investor-owned utilities in Oregon.<sup>69</sup>

1984 – Columbia Generating Station nuclear power plant, located on the Hanford site near Richland, Washington, becomes operational.<sup>70</sup>

1985 – The Hood River Conservation Project, funded by Bonneville Power Administration and operated by Pacific Power, helps prove that conservation was a viable energy resource that could be considered on equal ground with supply-side options in the Northwest.<sup>71</sup>



1986 – Oregon voters approve a ballot measure finalizing a three-person, Governor-appointed Public Utility Commission of Oregon to replace the single commissioner system previously in place.<sup>72</sup>

1986 – Chernobyl nuclear plant meltdown and steam explosion releases radioactivity into the atmosphere and becomes the worst nuclear accident in history.<sup>73</sup>

1988 – NASA climate scientist James Hansen testifies before Congress and warns about the dangers of global warming.<sup>74</sup> Meanwhile, the Intergovernmental Panel on Climate Change (IPCC), an intergovernmental body of the United Nations, is established to provide objective scientific information about climate change.<sup>75</sup>

1989 – Oregon requires investor-owned utilities (IOU) to conduct Integrated Resource Plans (IRPs), putting energy efficiency on equal footing with traditional generation resources.<sup>76</sup>

1990 – Congress passes the Clean Air Act Amendments of 1990 to curb acid rain, urban air pollution, toxic air emissions, and stratospheric ozone depletion.<sup>77</sup> Two-thirds of the sulfur dioxide emissions that cause acid rain come from fossil fuel power plants.<sup>78</sup> By 2019, the acid rain program had reduced SO<sub>2</sub> emissions from power plants by 92 percent and NO<sub>x</sub> by 85 percent.<sup>79</sup>

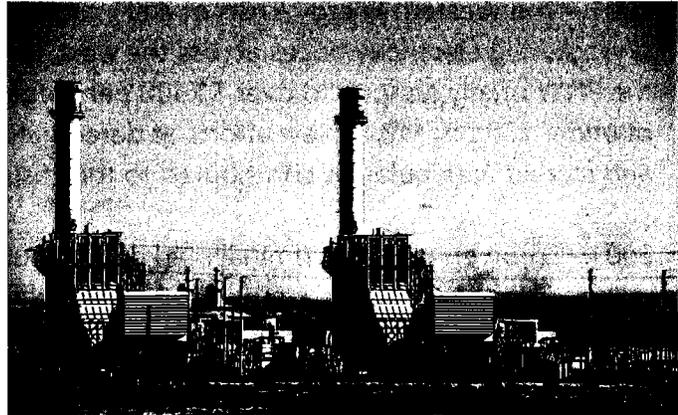


1991 – Snake River Sockeye Salmon are listed as an endangered species pursuant to the Endangered Species Act.<sup>80</sup> Between 1991 and 2005, 13 species of salmon or steelhead and four other fish within the Columbia River Basin, are listed for protection under the Endangered Species Act.<sup>81</sup>

1992 – Congress passes Energy Policy Act of 1992. Considered in the wake of the Persian Gulf War, the bill promotes energy efficiency and alternative fuels.<sup>82</sup>

1993 – After a series of mechanical problems, PGE permanently shuts the Trojan Nuclear Power Plant.<sup>83</sup>

1994 – The Hermiston Generating Project becomes the first natural gas facility to receive a site certificate from EFSC. The 468 MW plant begins operation in 1996.



The Hermiston Generating Plant provides power for nearly 500,000 households in the Pacific NW, courtesy of Perennial Power.

1997 – Portland General Electric, the utility with the most Oregon ratepayers, is bought by Enron for \$2.1 billion and the assumption of \$1.1 billion in debt.<sup>84</sup>

1997 – World powers, including the U.S., sign the Kyoto Protocol, committing industrialized countries, and economies in transition, to limit and reduce GHG emissions in accordance with individual targets. The Protocol goes into effect on 2005.<sup>85</sup>

1997 – Oregon becomes the first state in the country to establish a price on carbon with the EFSC CO<sub>2</sub> standard. It requires power plants to avoid, displace, or sequester a portion of their CO<sub>2</sub> emissions; applicants can pay a fee to offset these emissions.<sup>86</sup> The fees are used by The Climate Trust to purchase offsets.

1997 – Northwest Energy Efficiency Alliance (NEEA) is formed to promote energy efficiency through market transformation.<sup>87</sup>

1997 – Released in Japan in 1997 and worldwide in 2000, the Toyota Prius becomes the world’s first mass-produced hybrid electric vehicle.<sup>88</sup>



1999 – EPA issues the Regional Haze Rule to reduce the pollution that causes visibility impairment in national parks and wilderness areas. EPA requires states to submit regional haze plans in 2007.<sup>89</sup> The expense of complying with this plan contributes to the early closure of the Boardman Coal Plant, which is shuttered in 2020.

1999 – Oregon legislature passes SB 1149, creating the Public Purpose Charge for energy efficiency, renewable and low-income energy programs and partially deregulating the electric sector by authorizing long-term direct access for certain large retail customers of IOUs.<sup>90</sup>

1999 – Oregon legislature passes HB 3219, requiring electric utilities to allow net metering so that customers can generate onsite renewable resources and reduce their electricity bills.<sup>91</sup>

2001 – The Western Energy Crisis of 2001 causes power shortages in California and skyrocketing electricity prices across the west, including Oregon. Wholesale energy prices in the PNW briefly jumped to over \$1,300 per megawatt hour, much higher than the typical price of under \$50 per MWh. New efforts at deregulation, combined with historic drought conditions and market manipulation contributed to the crisis.<sup>92</sup>

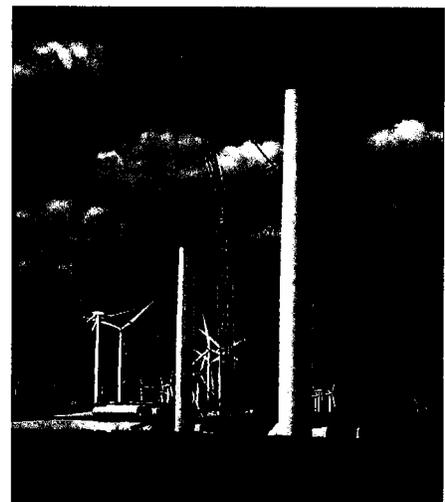
2001 - Enron engages in criminal market manipulation, exacerbating the energy crisis. Enron’s collapse leads to many PGE employees losing their jobs and much of their retirement savings.<sup>93</sup>

2001 – By the end of the year, 10 aluminum smelters in the NW are shutdown. This direct service industry goes from using a high of about 3,000 aMW in 1995 to about 300 aMW by 2006.<sup>94</sup>

2001 – The EFSC-approved Stateline Wind Project in Umatilla County becomes first utility-scale wind energy facility built in Oregon. The 222 MW facility has 229 turbines, each 440’ tall.<sup>95</sup>

2002 – Oregon becomes the first state to install solar panels on its state capitol building.<sup>96</sup>

2002 – Energy Trust of Oregon begins operation to administer energy efficiency and renewable energy programs for investor owned utilities.<sup>97</sup>



Wind turbine construction in Oregon.

- 2004 – Decommissioning of the Trojan Nuclear Power Plant is completed. The spent nuclear fuel remains onsite and is expected to stay onsite until there is a federally-approved repository for this material. The cooling tower is demolished two years later.<sup>98</sup>
- 2005 – Congress passes the Energy Policy Act of 2005. Among other things, this bill gives FERC explicit and “exclusive” authority to approve onshore LNG terminal siting applications.<sup>99</sup>
- 2006 – Jordan Cove and Pacific Connector pipeline are proposed as an LNG import terminal in Coos County, OR.<sup>100</sup>
- 2007 – Oregon legislature establishes Oregon’s first greenhouse gas reduction goals and creates the Oregon Global Warming Commission.<sup>101</sup>
- 2007 – Oregon legislature passes SB 838, requiring the state’s largest utilities to provide 25 percent of retail sales from eligible renewable sources by 2025.<sup>102</sup>
- 2008 – Ratepayer concerns contribute to an agreement by PGE to close the Boardman Coal Plant, which had been scheduled to operate until 2040, by the end of 2020. This is the first time a utility agrees to voluntarily close a coal plant in the U.S.<sup>103</sup>
- 2009 – Congress passes the American Recovery and Reinvestment Act, investing millions of dollars in states for clean energy and energy efficiency.<sup>104</sup>



- 2010 – Klamath Hydroelectric Settlement Agreement that is signed by PacifiCorp, several tribes, Oregon, California, and stakeholders. Through a surcharge, Oregon customers will help pay for Oregon’s share of dam removal costs. Timing of the dam removal is uncertain.<sup>105</sup>

Signing the Klamath agreements, from left, PacifiCorp Chairman and CEO Greg Abel, Interior Secretary Ken Salazar, Governor Arnold Schwarzenegger and Governor Ted Kulongoski. Photo courtesy Office of Governor Schwarzenegger and ENS.

- 2011 – Fukushima nuclear power plant accident in Japan is caused by a 9.0 earthquake and subsequent 40-foot tsunami that knocks out the electrical generation for the coolant pumps, resulting in core meltdowns at three units, the release of radioactive material, the evacuation of thousands of people, and the establishment of an uninhabitable exclusions zone.<sup>106</sup> Cleanup is expected to cost at least \$75 billion and as much as \$660 billion and take 30-40 years.<sup>107</sup>

2011 – Drive Oregon (now known as Forth) is incorporated by local business leaders and receives \$1.2 million in seed funding from the Oregon Legislature via the Oregon Innovation Council to grow Oregon’s electric vehicle industry.<sup>108</sup>

2012 – Obama Administration finalizes agreement with 13 large automakers to increase CAFE standards to 54.5 miles per gallon for cars and light-duty trucks by model year 2025.<sup>109</sup>

2012 – Jordan Cove and Pacific Connector pipeline revises plans to build an LNG import terminal in Coos County, and instead proposes an *export* terminal.<sup>110</sup>

2014 – Sunset of Oregon’s Business Energy Tax Credit. Under this program, ODOE certified almost 25,000 projects that helped save energy, displace conventional energy sources, or generate renewable energy.<sup>111</sup>

2015 – 195 countries join the Paris Agreement, bringing together developed and developing nations in committing to keep global temperature rise well below 2°C (3.6°F).<sup>112</sup>



Volkswagen created Electrify America with \$2 billion in funding as part of its emissions scam settlement with the U.S. and California. Pictured above, an Electrify America EV charging bank in Hood River, OR, courtesy of Columbia Insight. Photo by Jurgen Hess.

2015 – Volkswagen pleads guilty to emissions-cheating scandal.<sup>113</sup>

2016 – After years of planning, DEQ launches the Oregon Clean Fuels Program to reduce the carbon intensity of Oregon’s transportation fuels by 10% over 10 years.<sup>114</sup>



2016 – Oregon adopts a 50 percent renewable portfolio standard and becomes the first state to legislatively mandate an end to coal in the state’s electricity mix by 2030 with the passage of SB 1547, the Clean Electricity and Coal Transition Plan. This law also created a community solar program with requirements for low-income customer participation.<sup>115</sup>

2017 – Oregon’s Residential Energy Tax Credit expires. Over the lifetime of this program, more than 15,000 solar projects are approved, with a production estimate of about 75 million kWh/year.<sup>116</sup>



2017 – With the passage of the Keep Oregon Moving Act (HB 2017), Oregon adopts an Electric Vehicle Rebate program that includes a “Charge Ahead” component for low-income participants.<sup>117</sup> Oregon Governor Kate Brown issues Executive Orders 17-20<sup>118</sup> and 17-21<sup>119</sup> to reduce greenhouse gas emissions by accelerating energy efficiency in Oregon’s built environment and accelerating zero emission vehicle adoption.



2017 – The first utility-scale solar PV project larger than 50 MW in Oregon, the 56 MW Gala Solar project in Crook County, begins commercial operation. Just one year later, the Boardman Solar Project, with a capacity of 75 MW, receives a site certificate from EFSC. The project has not yet begun construction.<sup>120</sup>



2019 – Oregon legislature passes HB 2618 creating ODOE’s Solar + Storage Rebate Program. The program issues rebates for solar electric systems and paired solar and solar storage systems. At least 25 percent of available rebate dollars are set aside for low- or moderate-income residential customers and low-income service providers.<sup>121</sup>



2019 – For the first time since 1952, U.S. domestic production of primary energy surpasses consumption and the country exports more energy than it imports.<sup>122</sup>



2020 – Oregon Governor Kate Brown issues Executive Order 20-04 Directing State Agencies to Take Actions to Reduce and Regulate Greenhouse Gas Emissions.<sup>123</sup>



2020 – Oregon has 31,977 registered electric vehicles as of July 1.<sup>124</sup>



2020 – The Boardman Coal Plant, Oregon’s only coal power plant, closes on October 15.<sup>125</sup>



2020 – Construction underway on multiple large utility-scale wind and solar energy projects, including the Wheatridge Renewable Energy Facilities in Morrow County, the Montague Wind and Solar Projects in Gilliam County, and the Golden Hills Wind Facility in Sherman County.<sup>126</sup>



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### Oregon Electricity Use: Resource Mix

This illustration shows the state-level resource mix for investor- and consumer-owned electric utilities serving Oregon from 2019 to 2023. The mix of resources generating electricity used in Oregon includes in-state and out-of-state electricity generation. Most of the mix came from hydropower, natural gas, and coal. A smaller percentage of power in the region was provided by non-hydroelectric renewable resources, such as wind, solar, and biomass. Utilities also purchased 11.7 million megawatt-hours of unspecified power in 2023. "Unspecified" is the term used to describe electricity purchases from the regional market where the generating resource is not known. See the *Data Info* button for more information. In 2023, Oregonians used 60.3 million MWh of electricity. While not a generating resource, energy efficiency is considered the second largest resource behind hydropower. Energy efficiency is relied u..

### National Electricity Resource Mix for..



- Natural Gas 43.1%
- Nuclear 18.6%
- Coal 16.2%
- Wind 10.2%
- Hydro 5.7%
- Solar 3.9%
- Biomass 1.1%
- Petroleum 0.4%
- Geothermal 0.4%
- Other 0.4%

Explo..

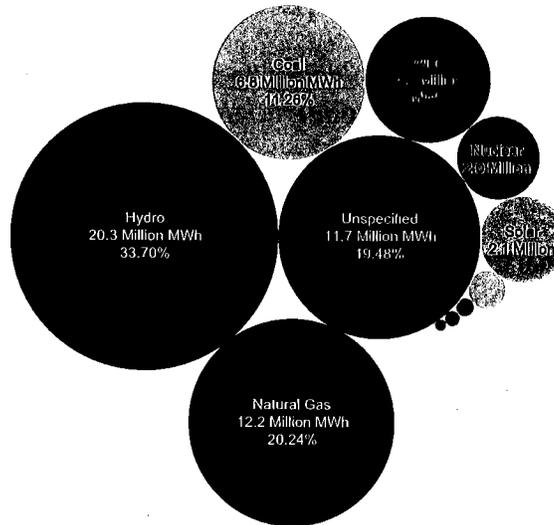
### Resource Type Report Year

- Hydro
- Unspecified
- Natural Gas
- Coal
- Wind
- Nuclear
- Solar
- Biomass
- Other
- Geothermal
- Biogas
- Petroleum

The bubble chart demonstrates how Oregon's electricity mix changes over time. Click ..

2023  
 Show history

### Oregon Electricity Use: Resource Mix Over Time



DATA INFO



### Electricity Resource Mix by Utility

Three investor-owned electric utilities serve Oregonians: Pacific Power, Portland General Electric, and Idaho Power (which serves customers in the northeast corner of Oregon), delivering approximately 60 percent of the electricity used by Oregonians in 2022. Portland General Electric is the state's largest utility - when ranked by either electricity sales or number of customers - with more than 922,444 customers in the Portland metro area and Salem. Pacific Power serves portions of Oregon, California, and Washington and is the state's second-largest electricity provider - when ranked by either electricity sales or number of customers - with 616,834 Oregon customers. The third-largest utility by electricity sales is Umatilla Electric Cooperative, serving 15,920 customers, some of which are large industrial customers. The fourth-largest utility by electricity sales is Eugene Water & Electric Board, serving 97,096 customers in the greater Eugene area. The fifth-largest electric utility by electricity sales is Central Lincoln PUD with 40,827 customers served along Oregon's central coastline. Together the 38 consumer-owned utilities serving Oregon delivered nearly 36 percent of all electricity used in Oregon in 2022. There are three types of COUs - electric cooperatives, people's utility districts, and municipal utilities - which are governed by publicly-elected boards. Electricity Service Suppliers deliver nearly 5 percent of electricity in Oregon. Find your utility here: <https://www.oregon.gov/energy/energy-oregon/pages/find-your-utility.aspx>

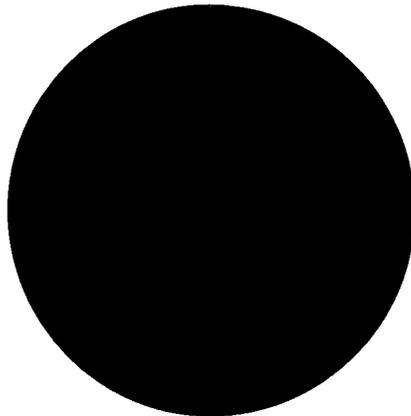
The Bonneville Power Administration, a federal power marketer, plays a critical role in the delivery of electricity to Oregon.

Explore  
Electric Utility List  
Eugene Water & Electric Board (EW..)

Resource Breakdown for 2022

#### Resource Type

- Natural Gas
- Solar
- Biomass
- Unspecified
- Hydro
- Bonneville Power Administration



#### Reported Total

2,422,407 MWh

#### Resource Mix Percentage

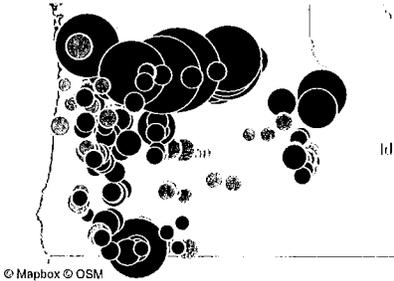
<b>Bonneville Pow..</b>	82.85%
<b>Hydro</b>	10.03%
<b>Unspecified</b>	4.55%
<b>Biomass</b>	2.51%
<b>Solar</b>	0.06%
<b>Natural Gas</b>	0.00%
<b>Grand Total</b>	100.00%

DATA INFO



### Electric Generation Sources in the Western Electric Coordinating Council Region 2023 Net Generation in MWh by Plant

#### Oregon Genera..



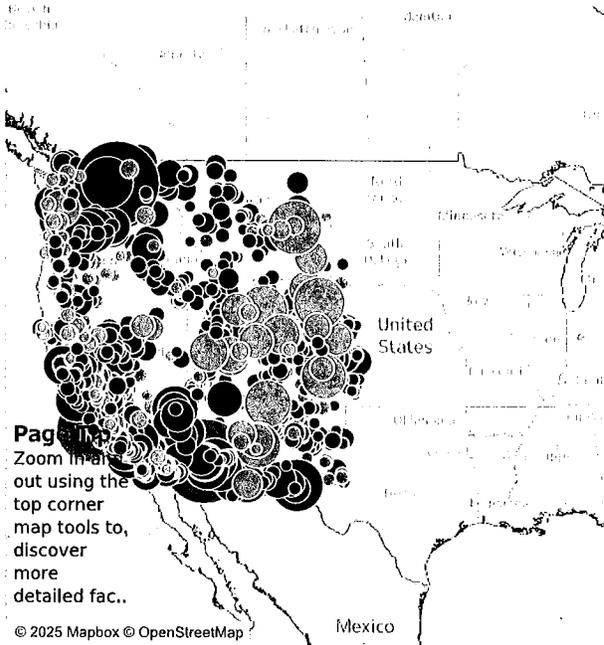
© Mapbox © OSM

These regional maps provide information about the facilities and resources used to generate electricity in the Western Electricity Coordinating Council's U.S. territory. The maps include facilities owned by Oregon utilities, facilities that utilities contract with to provide power to Oregon, and facilities that sell their electricity to Oregon utilities and others on the open western energy market.

Not all resources or facilities shown contributed to Oregon's 2023 resource mix, but some of these energy generators sell electricity to the western U.S. energy market from which Oregon utilities purchase power.

DATA INFO

#### Western Generation



© 2025 Mapbox © OpenStreetMap

**Page 11**  
Zoom in and out using the top corner map tools to discover more detailed fac..

Similarly, power that is produced in Oregon may be sold through the energy market to serve customers in other states. See the *Data Info* button for more information.

Note: There is a data issue with the magenta-colored "Other Fuels" dots not adequately identifying the resource. We are working on identifying the correct resources and will update this information as soon as we can.

Explore



#### Resource Type

- Biogas
- Biomass
- Coal
- Geothermal
- Hydro
- Natural Gas
- Nuclear
- Other Fuels
- Petroleum
- Solar
- Wind

#### Generating Site Owner

All



## Greenhouse Gas Emissions by Utility

Each utility's electricity resource mix determines how much greenhouse gas is emitted for every kilowatt hour of electricity it sells to customers in Oregon, which is shown in this bar chart. For example, in years where a greater portion of the resource mix is attributed to renewable energy resources, the emission rates go down. Oregon is on a path to reducing the amount of carbon dioxide and other greenhouse gas emissions associated with the state's electricity resource mix.

### Emissions per kWh Over Time

This information is based on Oregon Department of Environmental Quality GHG Reporting Program data. See the *Data Info* tab for more information.

Explore

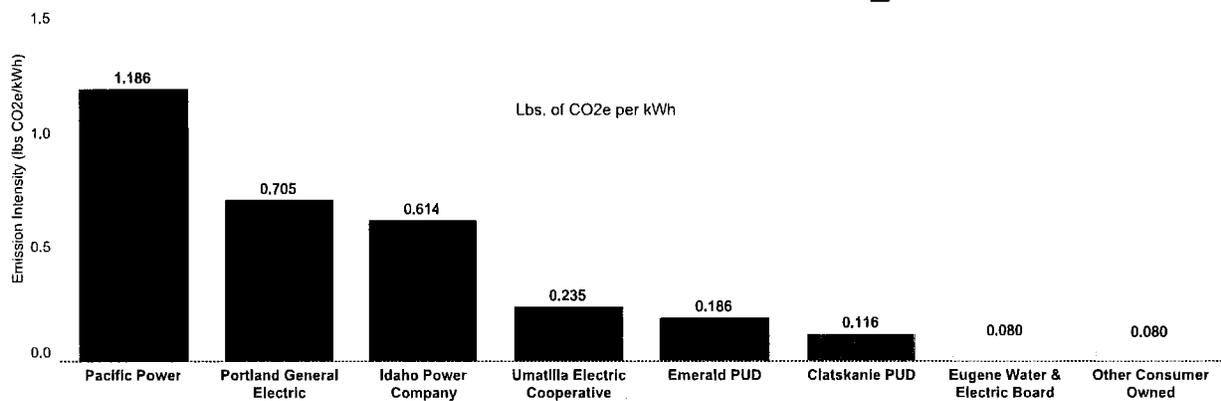


### Report Year

The bar chart shows utility emissions over time. Click the forward play button or manually adjust the slider from 2019 to 2023.

2023

Show history



DATA INFO



**Enrolled  
Senate Bill 1567**

Sponsored by Senators DEMBROW, MANNING JR, FREDERICK, Representatives DEXTER, EVANS, GRAYBER, PHAM; Senators ARMITAGE, GELSER BLOUIN, GORSEK, JAMA, LAWRENCE SPENCE, PATTERSON, STEINER HAYWARD, TAYLOR, WAGNER, Representatives ALONSO LEON, CAMPOS, GOMBERG, HELM, HOLVEY, HUDSON, NATHANSON, NELSON, NOSSE, POWER, REARDON, REYNOLDS, RUIZ, SANCHEZ, SCHOUTEN, WITT (Presession filed.)

CHAPTER .....

**AN ACT**

Relating to energy infrastructure resilience; creating new provisions; amending ORS 659A.885; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** Sections 2 to 6 of this 2022 Act are added to and made a part of ORS chapter 468B.

**SECTION 2.** (1) As used in sections 2 to 6 of this 2022 Act, "bulk oils or liquid fuels terminal" means an industrial facility located in Columbia, Multnomah or Lane County that is primarily engaged in the transport or bulk storage of oils or liquid fuel products and is characterized by having:

- (a) Marine, pipeline, railroad or vehicular transport access;
- (b) Transloading facilities for transferring shipments of oils or liquid fuel products between transportation modes; and
- (c) One or more bulk storage tanks with a combined capacity of two million gallons or more.

(2) An owner or operator of a bulk oils or liquid fuels terminal shall conduct and submit to the Department of Environmental Quality a comprehensive seismic vulnerability assessment for the entire bulk oils or liquid fuels terminal. A seismic vulnerability assessment submitted to the department under this section must:

(a) Include a seismic risk assessment, or a series of seismic risk assessments, conducted by qualified professionals using the most recent industry standards for assessing seismic risk to:

- (A) Buildings, structures and ancillary components;
- (B) Bulk storage tanks;
- (C) Spill containment structures;
- (D) Transloading facilities, including wharves, piers, moorings and retaining structures;
- (E) Loading racks;
- (F) Control equipment; and
- (G) Any other structures and related or supporting facilities that constitute the bulk oils or liquid fuels terminal;

(b) Include a determination of the bulk oils or liquid fuels terminal's vulnerability to liquefaction triggering and liquefaction consequences, such as lateral spreading and coseismic settlement, using standards in accordance with guidance contained in "National Academies of Sciences, Engineering and Medicine, State of the Art and Practice in the Assessment of Earthquake-Induced Soil Liquefaction and Its Consequences, 2016";

(c) Include a determination of whether the existing structures and related or supporting facilities that constitute the bulk oils or liquid fuels terminal have been designed, improved or retrofitted to reduce the potential for significant structural damage to property or harm to people or the environment in or adjacent to the bulk oils or liquid fuels terminal in the event of a magnitude 9.0 Cascadia Subduction Zone earthquake, including impacts from the expected duration of shaking; and

(d) Include a determination of the structures and related or supporting facilities that are most vulnerable to seismic risks and the potential of those structures and facilities to maintain safe operating conditions, or safe shutdown procedures, to protect public health, life safety and environmental safety against releases of oils or liquid fuel products, including information about operational procedures during disasters.

(3) The department shall review a seismic vulnerability assessment submitted under this section and approve the assessment if it meets the requirements of subsection (2) of this section and any other requirements for seismic vulnerability assessments contained in rules adopted under subsection (4) of this section.

(4)(a) The Environmental Quality Commission, in consultation with the State Department of Geology and Mineral Industries, may adopt by rule requirements for seismic vulnerability assessments submitted to the Department of Environmental Quality under this section.

(b) Rules adopted by the commission may require the owner or operator of a bulk oils or liquid fuels terminal to submit seismic vulnerability assessment updates to the department:

(A) Upon the retrofit or reconstruction of all or a part of a bulk oils or liquid fuels terminal; or

(B) Based on new scientific or technical findings, but no more frequently than once every three years.

(c) Notwithstanding subsection (2)(b) of this section, the commission may by rule adopt revised or additional standards for determining a bulk oils or liquid fuels terminal's vulnerability to liquefaction triggering and liquefaction consequences if the commission determines that guidance contained in "National Academies of Sciences, Engineering and Medicine, State of the Art and Practice in the Assessment of Earthquake-Induced Soil Liquefaction and Its Consequences, 2016" no longer represents the most recent industry standards for determining vulnerability to soil liquefaction triggering and liquefaction consequences.

**SECTION 3.** (1) The owner or operator of a bulk oils or liquid fuels terminal shall properly implement a seismic risk mitigation implementation plan that has been approved by the Department of Environmental Quality. A seismic risk mitigation implementation plan must, at a minimum, identify actions, with timelines, to protect public health, life safety and environmental safety within the facility, in areas adjacent to the facility and in other areas that may be affected as a result of damages to the facility. A seismic risk mitigation implementation plan, as a risk-based assessment, must include consideration of the likelihood of a magnitude 9.0 Cascadia Subduction Zone earthquake, the potential consequences of that event and the resources needed to respond to that event.

(2) The Environmental Quality Commission, in consultation with the State Department of Geology and Mineral Industries, shall adopt by rule a seismic risk mitigation implementation program for bulk oils or liquid fuels terminals that is based on risk. To the extent feasible and appropriate, the program adopted under this section shall be consistent and coordinated with the program established under ORS 468B.345 to 468B.415. Rules adopted under this section shall include, but not be limited to:

(a) Rules for the required content of seismic risk mitigation implementation plans and rules for approval by the Department of Environmental Quality of seismic risk mitigation implementation plans.

(b) Provisions for training, response exercises, external peer reviews, inspections and tests in order to verify the ability of the facility to sustain safe conditions and respond to uncontrolled releases of hazardous materials from the bulk oils or liquid fuels terminal due to an earthquake.

(c) Requirements to minimize harmful impacts to local communities and natural resources due to uncontrolled releases of hazardous materials from the bulk oils or liquid fuels terminal due to an earthquake and its associated direct and indirect impacts, including fires and flooding.

(d) Requirements for the inspection of bulk storage tanks at bulk oils or liquid fuels terminals.

(e) Design and construction standards for new bulk storage tanks constructed at bulk oils or liquid fuels terminals.

(f) Design and construction standards for seismic mitigation of existing bulk storage tanks, piping and related structures constructed at bulk oils or liquid fuels terminals.

(g) Provisions requiring the proper installation of seismically certified generators to power critical operations, or at a minimum, the installation of electrical hookups for emergency generators.

(h) Provisions for the review of seismic vulnerability assessments required under section 2 of this 2022 Act and seismic risk mitigation implementation plans required under subsection (1) of this section by state agencies with expertise in earthquake hazards, risk mitigation or emergency preparedness or management.

(i) Provisions requiring the owner or operator of a bulk oils or liquid fuels terminal to submit seismic vulnerability mitigation implementation plan updates to the department:

(A) According to a schedule established by the commission;

(B) Upon the retrofit or reconstruction of all or a part of a bulk oils or liquid fuels terminal; and

(C) Based on new scientific or technical findings, but no more frequently than once every three years.

(j) Provisions establishing a fee calculated to cover the costs to the department of reviewing seismic risk mitigation implementation plans submitted under this section and seismic risk assessments submitted under section 2 of this 2022 Act, less any federal funds received by the department for those purposes. Fees received by the department under this paragraph shall be deposited in the Seismic Risk Mitigation Fund established under section 6 of this 2022 Act.

(k) Provisions establishing grants or other financial assistance to owners or operators of bulk oils or liquid fuels terminals for improvements to existing infrastructure, provided that federal funds are made available to the department for that purpose.

**SECTION 3a.** The requirements of sections 2 to 6 of this 2022 Act do not apply to a bulk oils or liquid fuels terminal to the extent those requirements are preempted by the federal Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60101 et seq.

**SECTION 4.** Confidential business information submitted to the Department of Environmental Quality by the owner or operator of a bulk oils or liquid fuels terminal under section 2 or 3 of this 2022 Act is confidential and not subject to public disclosure under ORS 192.311 to 192.478, except that the department may disclose summarized information or aggregated data if the information or data does not directly or indirectly identify the confidential business information.

**SECTION 5.** (1) It is an unlawful employment practice for the owner or operator of a bulk oils or liquid fuels terminal to discharge, demote, suspend or in any manner discriminate or retaliate against an employee of the bulk oils or liquid fuels terminal with regard to pro-

motion, compensation or other terms, conditions or privileges of employment because the employee has in good faith:

(a) Reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation; or

(b) Provided information regarding a public health, life safety or environmental safety risk at the bulk oils or liquid fuels terminal to a federal, state or local government official or a person conducting a seismic risk assessment under section 2 of this 2022 Act.

(2) This section is subject to enforcement under ORS chapter 659A.

(3) The remedies provided by ORS chapter 659A are in addition to any common law remedy or other remedy that may be available to an employee for the conduct constituting a violation of this section.

**SECTION 6.** (1) The Seismic Risk Mitigation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Seismic Risk Mitigation Fund shall be credited to the fund.

(2) Moneys in the Seismic Risk Mitigation Fund shall consist of:

(a) Money appropriated to the fund by the Legislative Assembly;

(b) Fees deposited in the fund under section 3 of this 2022 Act;

(c) Moneys transferred to the fund from the federal or state government; or

(d) Gifts, grants and donations received from any source.

(3) All moneys in the Seismic Risk Mitigation Fund are continuously appropriated to the Department of Environmental Quality for the purposes of:

(a) Reviewing seismic risk mitigation implementation plans submitted under section 3 of this 2022 Act and seismic risk assessments submitted under section 2 of this 2022 Act; and

(b) Providing grants or other financial assistance to owners or operators of bulk oils or liquid fuels terminals under section 3 (2)(k) of this 2022 Act.

**SECTION 7.** ORS 659A.885 is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.370 or 659A.421 or section 5 of this 2022 Act; or

(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.370 or 659A.421:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:

(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or

(b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.

(8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

(9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

(a) In an amount not exceeding \$50,000 for a first violation; and

(b) In an amount not exceeding \$100,000 for any subsequent violation.

(10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

**SECTION 8.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463, Oregon Laws 2019, section 13, chapter 701, Oregon Laws 2019, and section 45, chapter 367, Oregon Laws 2021, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 or **section 5 of this 2022 Act**; or

(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

- (d) Any attorney fee agreement shall be subject to approval by the court.
- (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:
- (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or
- (b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.
- (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.
- (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.
- (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.
- (8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:
- (a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;
- (b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;
- (c) At the request of any party, the action shall be tried to a jury;
- (d) The court shall award reasonable attorney fees to a prevailing plaintiff;
- (e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and
- (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).
- (9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:
- (a) In an amount not exceeding \$50,000 for a first violation; and
- (b) In an amount not exceeding \$100,000 for any subsequent violation.
- (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court

determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

**SECTION 9.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463, Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, section 13, chapter 701, Oregon Laws 2019, and section 46, chapter 367, Oregon Laws 2021, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 or **section 5 of this 2022 Act**; or

(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:

(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or

(b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.

(8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

(9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

(a) In an amount not exceeding \$50,000 for a first violation; and

(b) In an amount not exceeding \$100,000 for any subsequent violation.

(10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

**SECTION 10.** A person who owns or operates an existing bulk oils or liquid fuels terminal on the effective date of this 2022 Act shall submit the seismic vulnerability assessment required by section 2 of this 2022 Act no later than June 1, 2024.

**SECTION 11.** (1) Section 3 of this 2022 Act becomes operative June 1, 2024.

(2) The Environmental Quality Commission, the Department of Environmental Quality, and the State Department of Geology and Mineral Industries may adopt rules and take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission, the Department of Environmental Quality and the State Department of Geology and Mineral Industries, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, powers and functions conferred on the commission, the Department of Environmental Quality and the State Department of Geology and Mineral Industries by section 3 of this 2022 Act.

**SECTION 12.** (1) The State Department of Energy shall develop an energy security plan. The energy security plan must meet the requirements for a state energy security plan described in 42 U.S.C. 6326.

(2) To the extent consistent with the requirements of 42 U.S.C. 6326, the energy security plan must align with strategies in the Oregon Fuel Action Plan developed by the department and must include, but need not be limited to:

(a) An evaluation of the state's ability to recover quickly from physical threats, including a magnitude 9.0 Cascadia Subduction Zone earthquake, and cybersecurity threats.

(b) Recommendations for increasing the geographic diversity of fuel storage capacity throughout this state.

(c) An assessment of the seismic resilience of existing fuel storage facilities throughout this state.

(d) Consistent with state programs to reduce greenhouse gas emissions associated with transportation fuels, an assessment of the use of renewable fuels and other innovative alternatives to improve disaster resilience.

(e) An evaluation of strategies for mitigating barriers to implementing a geographically distributed fuel network throughout this state, including:

(A) Adoption of Oregon Fuel Action Plan criteria for predesignated fuel points of distribution for receiving emergency fuel supplies at selected fuel diversification sites.

(B) Strategies for expanding storage capacities at public facilities with existing capability to store and dispense unleaded, diesel or aviation fuel, including an evaluation of whether fuel storage sites contain properly installed seismically certified generators and adequate on-site fuel storage capacity to power backup generators so that independent operations can be maintained for three or more weeks after a Cascadia Subduction Zone earthquake.

(C) Partnerships with private-sector companies to build fuel storage capacity at identified, prioritized locations, especially private-sector companies that provide an emergency or essential service mission to save or sustain life or support the restoration of critical lifelines and services in support of the state's overall response and recovery effort.

(D) Strategies for increasing geographically distributed fuel storage that prioritize areas of this state that are expected to be most vulnerable to a Cascadia Subduction Zone earth-

quake, including local or regional islanding effects that would isolate a region from the rest of this state as a result of road or bridge damage.

(E) An evaluation of potential impacts to communities adjacent to potential locations for emergency fuel storage or expanded fuel storage, including consultation and outreach with those communities.

(3) In developing and implementing the energy security plan, the department shall consult with:

(a) Relevant state government agencies, including the Public Utility Commission, the Department of Environmental Quality, the Department of Transportation, the Oregon Department of Aviation, the Office of Emergency Management, the State Department of Geology and Mineral Industries and the Environmental Justice Task Force;

(b) Local governments;

(c) Tribal governments;

(d) Consumer-owned and investor-owned electric utilities;

(e) Natural gas utilities;

(f) Fuel suppliers;

(g) Qualified technical experts in disaster resilience; and

(h) Any other person with relevant knowledge or experience.

(4) No later than September 15 of each even-numbered year, the State Department or Energy shall provide to the interim committees of the Legislative Assembly related to energy a report in the manner provided under ORS 192.245 describing the implementation or revision of the energy security plan developed under this section.

**SECTION 13.** Section 12 of this 2022 Act is amended to read:

**Sec. 12.** (1) The State Department of Energy shall develop an energy security plan. The energy security plan must meet the requirements for a state energy security plan described in 42 U.S.C. 6326.

(2) To the extent consistent with the requirements of 42 U.S.C. 6326, the energy security plan must align with strategies in the Oregon Fuel Action Plan developed by the department and must include, but need not be limited to:

(a) An evaluation of the state's ability to recover quickly from physical threats, including a magnitude 9.0 Cascadia Subduction Zone earthquake, and cybersecurity threats.

(b) Recommendations for increasing the geographic diversity of fuel storage capacity throughout this state.

(c) An assessment of the seismic resilience of existing fuel storage facilities throughout this state.

(d) Consistent with state programs to reduce greenhouse gas emissions associated with transportation fuels, an assessment of the use of renewable fuels and other innovative alternatives to improve disaster resilience.

(e) An evaluation of strategies for mitigating barriers to implementing a geographically distributed fuel network throughout this state, including:

(A) Adoption of Oregon Fuel Action Plan criteria for predesignated fuel points of distribution for receiving emergency fuel supplies at selected fuel diversification sites.

(B) Strategies for expanding storage capacities at public facilities with existing capability to store and dispense unleaded, diesel or aviation fuel, including an evaluation of whether fuel storage sites contain properly installed seismically certified generators and adequate on-site fuel storage capacity to power backup generators so that independent operations can be maintained for three or more weeks after a Cascadia Subduction Zone earthquake.

(C) Partnerships with private-sector companies to build fuel storage capacity at identified, prioritized locations, especially private-sector companies that provide an emergency or essential service mission to save or sustain life or support the restoration of critical lifelines and services in support of the state's overall response and recovery effort.

(D) Strategies for increasing geographically distributed fuel storage that prioritize areas of this state that are expected to be most vulnerable to a Cascadia Subduction Zone earthquake, including local or regional islanding effects that would isolate a region from the rest of this state as a result of road or bridge damage.

(E) An evaluation of potential impacts to communities adjacent to potential locations for emergency fuel storage or expanded fuel storage, including consultation and outreach with those communities.

(3) In developing and implementing the energy security plan, the department shall consult with:

(a) Relevant state government agencies, including the Public Utility Commission, the Oregon Department of Environmental Quality, the Department of Transportation, the Department of Aviation, the [Office] Oregon Department of Emergency Management, the State Department of Geology and Mineral Industries and the Environmental Justice Task Force;

(b) Local governments;

(c) Tribal governments;

(d) Consumer-owned and investor-owned electric utilities;

(e) Natural gas utilities;

(f) Fuel suppliers;

(g) Qualified technical experts in disaster resilience; and

(h) Any other person with relevant knowledge or experience.

(4) No later than September 15 of each even-numbered year, the State Department of Energy shall provide to the interim committees of the Legislative Assembly related to energy a report in the manner provided under ORS 192.245 describing the implementation or revision of the energy security plan developed under this section.

**SECTION 14.** The amendments to section 12 of this 2022 Act by section 13 of this 2022 Act become operative on July 1, 2022.

**SECTION 15.** No later than November 1, 2024, the Department of Environmental Quality shall provide a report, including recommendations for legislation, to the interim committees of the Legislative Assembly related to energy, in the manner provided under ORS 192.245. The report required under this section must include:

(1) A summary of information received by the department under section 2 of this 2022 Act; and

(2) Policy recommendations for making the provisions of sections 2 to 6 of this 2022 Act applicable to additional regions of this state, based on the risk to each additional region from an earthquake or tsunami.

**SECTION 16.** The State Department of Energy shall submit the energy security plan developed under section 12 of this 2022 Act in a report to the interim committees of the Legislative Assembly related to energy, in the manner provided under ORS 192.245, no later than June 1, 2024.

**SECTION 17.** Sections 15 and 16 of this 2022 Act are repealed on January 2, 2025.

**SECTION 18.** (1) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Environmental Quality by section 1 (3), chapter 673, Oregon Laws 2021, for the biennium ending June 30, 2023, for land quality, is increased by \$712,318 for implementation of the provisions of sections 2 to 6 and 15 of this 2022 Act.

(2) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 4, chapter 423, Oregon Laws 2021, for the biennium ending June 30, 2023, as the maximum limit for payment of expenses from federal funds collected or received by the State Department of Energy, is increased by \$327,996 for implementation of the provisions of sections 12 and 16 of this 2022 Act.

**SECTION 19.** This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

**Passed by Senate March 1, 2022**

.....  
Lori L. Brocker, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House March 4, 2022**

.....  
Dan Rayfield, Speaker of House

**Received by Governor:**

.....M.,....., 2022

**Approved:**

.....M.,....., 2022

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2022

.....  
Shemia Fagan, Secretary of State

Oregon Department of Energy (</energy/Pages/index.aspx>) / Safety & Resilience (</energy/safety-resiliency/Pages/default.aspx>) / Energy System Resilience

## Energy System Resilience

*The Oregon Department of Energy is responsible for ensuring a resilient energy system.*

A resilient energy system is one that can recover quickly after a disruption like a Cascadia Subduction Zone earthquake, a sea level rise such as a storm surge, or heightened forest fire dangers.

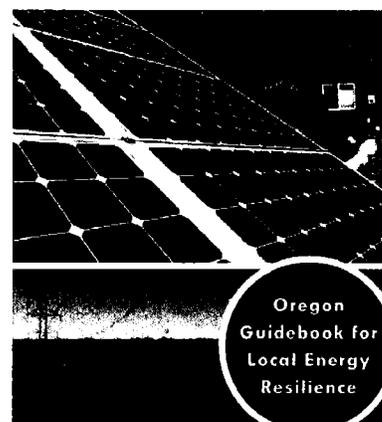
Follow updates on ODOE's **safety and resilience work on our blog** (<https://energyinfo.oregon.gov/blog?category=Safety%20%26amp%3b%20Resilience>).

### Oregon Guidebook for Local Energy Resilience

(</energy/safety-resiliency/Pages/Local-Energy-Resilience-Guide.aspx>)

In 2016, ODOE and Central Lincoln People's Utility District (<https://clpud.org/>) were selected to participate in the **National Governors Association's Policy Academy on Grid Modernization** (<https://energyinfo.oregon.gov/blog/2016/12/19/oregon-department-of-energy-and-central-lincoln-pud-tapped-for-national-governors-association-project-to-modernize-electric-power-sector/>).

The partnership, along with input from several other Oregon utilities, helped inform the ***Oregon Guidebook for Local Energy Resilience: for Small and Medium Utilities*** (</energy/safety-resiliency/Pages/Local-Energy-Resilience-Guide.aspx>). The guidebook serves as an action plan for consumer-owned utilities, including recommended steps to enhance local energy resilience; a list of local, state, and federal resources; and a number of case studies and resilience topic deep dives to help COUs better prepare for emergencies that could disrupt electricity service.



For Small and Medium Electric Utilities



2019

### Energy Resilience Planning

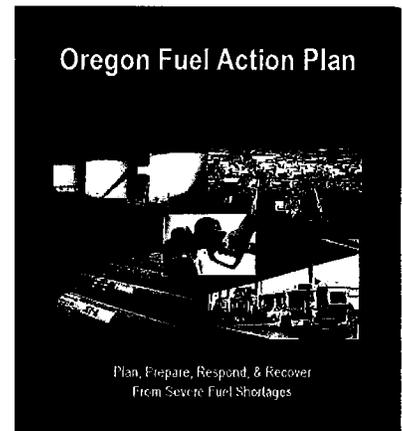
Our programs support projects that boost resilience, such as distributed generation, **marine energy** (</energy/energy-oregon/Pages/Marine.aspx>), and **energy storage** (</energy/safety-resiliency/Pages/Energy-Storage.aspx>). ODOE is also working with other state and local agencies and stakeholders to assess the current risks to our energy system, and how we would respond.

Our planning work includes mitigating the effects of a short-term disaster as well as supporting flexible energy systems that can respond to climate change efforts.

## Oregon Fuel Action Plan

(</energy/safety-resiliency/Pages/Petroleum.aspx>) The Oregon Department of Energy is responsible for implementing the **Oregon Fuel Action Plan** (</energy/safety-resiliency/Pages/Petroleum.aspx>), which outlines Oregon's response to severe or long-term petroleum shortages or disruptions.

The Plan addresses how we would access gasoline and diesel in Oregon, and how we would distribute fuel to state emergency services such as law enforcement, fire, and medical services, and to essential service providers that include utilities, telecommunications, public works, public transit, and sanitation services.



## Be Prepared

In addition to ODOE's work, other state of Oregon agencies are also focused on large-scale resiliency planning. The **Oregon Office of Emergency Management** (</oem/Pages/About-Us.aspx>) coordinates statewide efforts for preparedness, response, recovery, and mitigation. Learn more by reading the **Oregon Resilience Plan** [↗](/oem/Documents/Oregon_Resilience_Plan_Final.pdf) ([/oem/Documents/Oregon\\_Resilience\\_Plan\\_Final.pdf](/oem/Documents/Oregon_Resilience_Plan_Final.pdf)).

Oregonians can also do their part. Be prepared for an emergency at home, at work, and in your car. **Visit our blog** (<https://energyinfo.oregon.gov/blog/2017/09/07/get-ready-get-set/>) for more tips.

**Ready.gov** [↗](https://www.ready.gov/) (<https://www.ready.gov/>) also has recommendations for how you can be prepared, including putting together an emergency kit with food and water, determining a family communication plan, and more.

## RESOURCES

**Energy Planning** (</energy/energy-oregon/Pages/Energy-Planning.aspx>)  
**Energy Storage** (</energy/safety-resiliency/Pages/Energy-Storage.aspx>)  
**Energy Assurance Plan** (</energy/safety-resiliency/Pages/Energy-Assurance-Plan.aspx>)  
**Oregon Resilience Plan** ([/oem/Documents/Oregon\\_Resilience\\_Plan\\_Final.pdf](/oem/Documents/Oregon_Resilience_Plan_Final.pdf))  
**ODOE's Blog: Safety & Resilience** (<https://energyinfo.oregon.gov/blog?category=Safety%20%26amp%3b%20Resilience>)

## RESILIENCE IN OREGON

**Oregon Guidebook for Local Energy Resilience** (</energy/safety-resiliency/Pages/Local-Energy-Resilience-Guide.aspx>)  
**Oregon Fuel Action Plan** (</energy/safety-resiliency/Pages/Petroleum.aspx>)

**Sign Up For Email Updates**

**(<http://web.energy.oregon.gov/cn/a6n53/subscribe>)**

Contact Our Energy Resiliency Team:

503-378-4040

800-221-8035

[askenergy@oregon.gov](mailto:askenergy@oregon.gov) (<mailto:askenergy@oregon.gov>)

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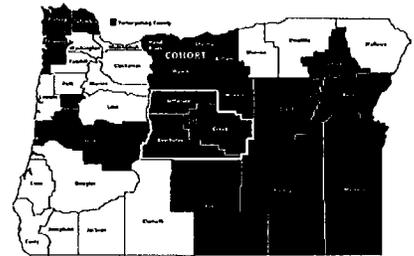
## County Energy Resilience Grant Program

In 2023, the Oregon Legislature passed **HB 3630** (<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>), which directed the Oregon Department of Energy to create a grant program to support Oregon counties with energy resilience planning. Specifically, HB 3630 provides up to \$50,000 per county to develop an energy resilience plan.

(/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-Opportunity-Announcement.pdf)

The County Energy Resilience Grant Program provides grants to Oregon counties to develop energy resilience plans that:

- Map current energy infrastructure, natural hazard risks, and communities that experience social vulnerability.
- Identify needs to increase resilience.
- Identify steps for implementation.
- Engage with environmental justice communities to identify communities that experience social vulnerabilities.



Exact requirements for plan content are stipulated in **HB 3630**

(<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>).

The Oregon Department of Energy has up to \$50,000 per Oregon county available for this program for a total of \$1.8 million. This is a noncompetitive grant program with no match requirement. Every one of Oregon's 36 counties are eligible to receive funds provided they meet the eligibility requirements. Counties may work together and pool funds in a cohort.

### Opportunity Announcement

ODOE posted the **Opportunity Announcement** (/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-Opportunity-Announcement.pdf) for funding on May 22, 2024 and accepted applications through February 28, 2025. Nineteen counties applied to participate in the program. Counties must submit the program completion form and a copy of their plans by August 1, 2025.

**Program Resources:** [FAQs](#) (/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-FAQs.pdf) | [Plan Development Resources](#) (/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-Resources-List.pdf)

The **resources document** (/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-Resources-List.pdf) is a great tool for assisting in the development of the plan. It includes a list of technical assistance providers, mapping resources, example plan information, and more. The County Energy Resilience Program Coordinator is also available to answer questions and provide connections to further resources.

### Stakeholder Engagement

ODOE hosted two informational webinars on June 6 and June 25 to share more about the County Energy Resilience Program. Each virtual event offered a presentation on the program, followed by a question and answer session. Find the recordings below.

#### Meeting Details

##### Informational Webinar

Tuesday, June 25, 2024 | 1 p.m. - 2 p.m.

Meeting Recording (<https://youtu.be/CIWEzT5mXU>)

#### Meeting Materials

##### Meeting Presentation (/energy/safety-

resiliency/Documents/2024-06-25-County-Resilience-Grants-PPT.pdf)

**Informational Webinar**  
Thursday, June 6, 2024 | 9 a.m. - 10 a.m.

**Meeting Recording**

(<https://youtu.be/pWU5LLh1lc>)

**Meeting Presentation (/energy/safety-resiliency/Documents/2024-06-06-County-Resilience-Grants-Webinar-PPT.pdf)**

## Funding for Tribes

The Bureau of Indian Affairs (BIA) Tribal Community Resilience Annual Awards Program (<https://www.bia.gov/service/tcr-annual-awards-program>) offers funds to Tribes to achieve similar goals to the County Energy Resilience Program.

Tribes can request **no-cost, non-competitive technical assistance** (<https://www.energy.gov/indianenergy/technical-assistance>) from the U.S. Department of Energy's Office of Indian Energy Policy and Programs to complete energy resilience planning.

## RESOURCES

**HB 3630** (<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>)  
**Program Flyer** (/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-One-Pager.pdf)  
**Informational Webinars** (/energy/safety-resiliency/Pages/County-Resilience.aspx#meetings)  
**Other ODOE Programs** (/energy/Incentives/Pages/default.aspx)  
**Awarded Grant Recipients** (<https://energyinfo.oregon.gov/blog/2025/3/17/oregon-department-of-energy-awards-grants-to-19-counties-for-energy-resilience-planning>)

**2025 Report to the Legislature** (/energy/Data-and-Reports/Documents/2025-County-Energy-Resilience-Annual-Report.pdf) (/energy/safety-resiliency/Pages/County-Resilience.aspx#meetings)

**Opportunity Announcement** (/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-Opportunity-Announcement.pdf)

**Application Period: Closed**

- **FAQs** (/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-FAQs.pdf)
- **Plan Development Resources** (/energy/safety-resiliency/Documents/County-Resilience-Grants-ODOE-Resources-List.pdf)

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**Sign Up For Email Updates**  
(<http://web.energy.oregon.gov/cn/a6n53/subscribe>)

## CONTACT PROGRAM STAFF

**county.resilience@energy.oregon.gov** (mailto:county.resilience@energy.oregon.gov)  
971-240-3577

🗨️ **Help us improve!** Was this page helpful? Yes No

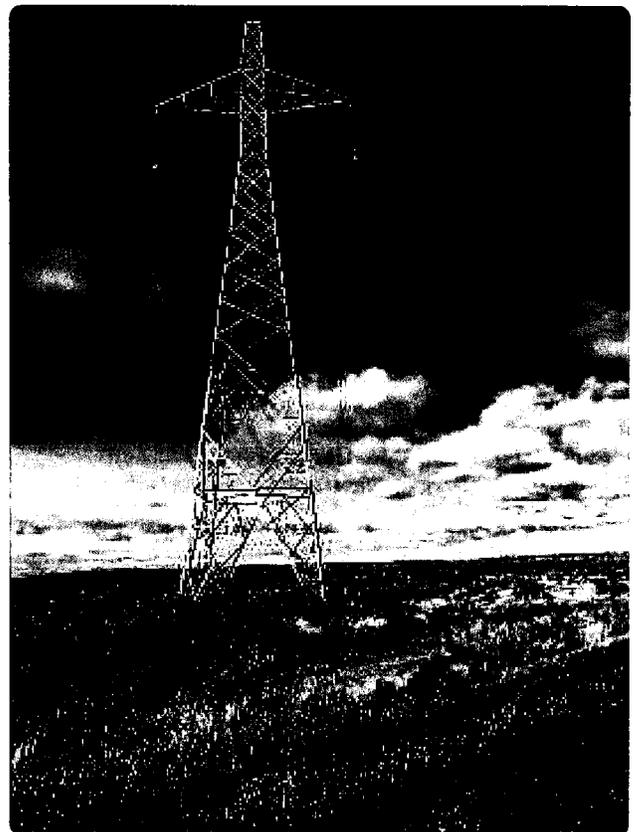
## Energy Storage

*Energy storage may be a key tool to integrate renewable resources into the electricity grid.*

Some electricity resources, such as nuclear or coal-burning facilities, produce energy on-demand. **Renewable resources** (</energy/energy-oregon/Pages/Renewable-Energy.aspx>), such as wind and solar power, are not always available to match demand, since the wind doesn't always blow and the sun doesn't always shine.

Storing energy, like in a battery, can help us capture renewable energy to be used when it's needed (even solar power in the middle of the night). Not only can smart storage solutions help us increase the use of renewable electricity, it can also improve the resiliency of the power grid.

In 2015, ODOE secured financial and programmatic support from **Sandia National Laboratories** (<https://www.sandia.gov/>) for an energy storage pilot project at the **Eugene Water & Electric Board** (<https://www.eweb.org/>). ODOE provided technical expertise and support to EWEB for their project demonstrating energy storage and "microgrid" technology. The project helps Oregon better understand different storage technologies to improve system resilience and strengthen long-term grid resiliency.



ODOE is also bringing together statewide stakeholders to assess the long-term benefits of energy storage. Working with the **Oregon Public Utility Commission** (<https://www.puc.state.or.us/Pages/Index.aspx>), we are developing evaluation criteria for electrical storage systems:

- **Energy Storage PUC Docket for PacifiCorp** (<https://apps.puc.state.or.us/edockets/docket.asp?DocketID=20915>)

- **Energy Storage PUC Docket for Portland General Electric** [↗](https://apps.puc.state.or.us/edockets/docket.asp?DocketID=20913)  
(<https://apps.puc.state.or.us/edockets/docket.asp?DocketID=20913>)

#### RESOURCES

**Energy System Resiliency** (</energy/safety-resiliency/Pages/Resilience.aspx>)  
(</energy/energy-oregon/Pages/Energy-Planning.aspx>)  
**Energy Planning** (</energy/energy-oregon/Pages/Energy-Planning.aspx>)  
(</energy/energy-oregon/Pages/Energy-Planning.aspx>)

Contact the Planning & Innovation Team:

503-378-4040

800-221-8035

[askenergy@oregon.gov](mailto:askenergy@oregon.gov) (<mailto:askenergy@oregon.gov>)

🗣️ **Help us improve!** Was this page helpful?    Yes    No

# OREGON RESILIENCE CASE STUDY

## BUSINESS CONTINUITY PLANNING: DERS & MICROGRIDS

A Business Continuity Plan (BCP) ensures an individual organization can continue to perform its **essential functions**, provide **essential services**, and deliver **core capabilities** during a disruption to normal operations.

Oregon utilities have implemented a number of BCP actions related to Distributed Energy Resources (DERs) and microgrids.

### Eugene Water & Electric Board

The Eugene Water and Electric Board, which serves about 93,000 electric customers and 53,000 water customers in the Eugene area, has partnered with the two Eugene-area school districts to install back-up power capability and install or upgrade water well equipment at district-owned facilities. Many Eugene-area schools have existing rooftop solar that could provide on-site power for pumping water in addition to the back-up power sources. EWEB is investigating several possible back-up power sources, and is installing a microgrid back-up battery power source at Howard Elementary school in 2018

and a new water well and pump station in the spring of 2019. This microgrid is sized to run the water well pump at the site for up to three weeks, while the existing solar array will be configured to allow for charging of the battery bank. EWEB's project, which is designed to increase resiliency and support research and design, was funded through a grant with ODOE, Sandia National Laboratories, Advanced Grid Research and Clean Energy States Alliance. EWEB's goal is that five schools will be water resource-ready within five years. Within 5-10 years, microgrids may become more cost effective, which may result in penetration of these power sources to the electrical grid, due to an increase in customer-owned battery storage systems. Research from this first project and the following efforts will inform future policies, and will be used for planning purposes to better understand how integration with these systems will benefit the grid and the customer.

Because EWEB is both an electric and water utility, it is also focused on developing distributed emergency



EWEB contractor installs back-up battery power system.



## Tillamook People's Utility District

The Tillamook area is known for its dairy production, so the area is well-stocked with animal waste. Part of the PUD's three-year strategic plan is to assess how three local waste digesters could be developed into a microgrid to provide power, particularly after an emergency.

Two digesters are currently operating in the area – one is owned by a local farmer where the power is sold into the grid using BPA transmission lines, and a second is owned by a group of five farmers where the power is purchased by the PUD. A third is currently non-functioning, and owned by the Port of Tillamook. When it's back up and running, Tillamook PUD will likely purchase the power. The three digesters could produce up to 3 MW of power altogether.



Cost remains an issue, as producing power from the digesters includes costs to ship waste and operate the equipment. Tillamook PUD currently offers a "green power" program where customers can buy blocks of the power – but it is still at a margin loss for the PUD. It is reviewing possible changes to the program, and will be working with the creamery co-op to create a marketing plan to see if customers would be interested in buying in to a re-worked waste-produced power program. Tillamook is optimistic about the program – the creamery already plans to use green power to operate its new visitor center, and the local Pelican Brewery would also use it.

## Eugene Water & Electric Board

In addition to continuing to implement seismic and preparedness activities, EWEB is actively deploying AMI "smart meter" technology, as well as black starting its generation facilities after an emergency to power critical loads in the Eugene area.

An AMI system is still in the deployment stage at EWEB, with about 4,000 or so smart meters deployed among more than 90,000 electric meters territory-wide. An AMI system would allow EWEB to better respond in an emergency, where the utility could turn on or off specific areas around the city and direct power to critical services. EWEB is currently installing the smart meters as opportunity allows – including new construction, new tenants, or large renovations. EWEB hopes to have the AMI system deployed within three years.

After a large emergency, power systems are likely to experience failure. EWEB is investigating the feasibility of black starting its hydro generators and customer owned local generators to power critical facilities after an emergency. Additionally, EWEB is in plans to launch a study to work with customers to better measure their load, and identify how they could trim energy or water use during emergency situations if curtailment is needed to maintain stability. The process could identify the smallest possible load they can handle and still keep things running – this will help ensure that a black-started generator isn't overloaded with a larger load beyond its capability.

## Central Lincoln People's Utility District

Central Lincoln's advanced metering infrastructure (AMI) system has been fundamental to improving reliability and resiliency in day to day operations. Employees are able to view meter data on handheld



devices and operators can determine system status from the substation to the customer meter. After a disaster, having eyes on the system to the meter level means that crews can be directed to specific prioritized outages resulting in more timely repairs and reduced outage times. Central Lincoln will continue to use AMI data to optimize its systems including the communication network that it relies upon to operate. With the AMI system, Central Lincoln is in a position to integrate distributed energy resources as they come available including solar, wind, biomass, battery storage, and wave energy.

## National Examples

See our Deep Dive on [\*Deploying Resilient Microgrid Solutions\*](#) for national examples of DERs.

**Enrolled  
House Bill 3630**

Sponsored by Representatives RAYFIELD, PHAM K, Senator GOLDEN, Representative MARSH, Representatives ANDERSEN, BOWMAN, DEXTER, FAHEY, GAMBA, GRAYBER, HOLVEY, HUDSON, KROFF, MCLAIN, NATHANSON, NERON, NOSSE, PHAM H, REYNOLDS, SOSA, Senators LIEBER, PATTERSON, SOLLMAN

CHAPTER .....

AN ACT

Relating to energy; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**PROGRAM TO ASSIST ENVIRONMENTAL JUSTICE COMMUNITIES**

**SECTION 1.** The State Department of Energy shall establish a program to provide assistance related to energy projects and activities to environmental justice communities, as defined in ORS 469A.400. At a minimum, the program must provide environmental justice communities with information regarding:

- (1) Funding resources.
- (2) Technical assistance.
- (3) Other support that may be available.

**STATE ENERGY STRATEGY**

**SECTION 2.** (1) The State Department of Energy shall develop a comprehensive state energy strategy that identifies optimized pathways to achieving the state's energy policy objectives.

- (2) The state energy strategy must be informed, at a minimum, by the following:
  - (a) Stakeholder perspectives;
  - (b) State laws, policies and targets regarding energy and greenhouse gas emissions;
  - (c) Existing energy and integrated resource plans;
  - (d) Energy-related studies and data analysis; and
  - (e) State energy policy objectives.
- (3) In identifying optimized pathways to achieving the state's energy policy objectives, the state energy strategy must take into account, at a minimum, the following factors:
  - (a) State energy demand and trends;
  - (b) Energy resources and technology choices in consideration of costs, energy efficiency, feasibility and availability;
  - (c) Economic and employment impacts;
  - (d) Energy burden and affordability;

- (e) Energy resilience, as defined in section 29, chapter 508, Oregon Laws 2021, and energy reliability;
  - (f) Environmental justice, as defined in ORS 469A.400;
  - (g) Land use considerations;
  - (h) Natural resource impacts;
  - (i) Emerging technologies and investment opportunities;
  - (j) Energy generation, transmission and distribution infrastructure needed to achieve state energy policy objectives;
  - (k) Existing and potential incentives to support energy efficiency, development and deployment;
  - (L) Energy security and impacts of broader markets;
  - (m) Community benefits; and
  - (n) Community energy resilience, as defined in section 29, chapter 508, Oregon Laws 2021.
- (4)(a) In developing the state energy strategy, the department shall engage with relevant state agencies, federally recognized Indian tribes and stakeholders. At a minimum, the stakeholders must represent a diverse range of:
- (A) Interests, perspectives, expertise and education;
  - (B) Socioeconomic backgrounds;
  - (C) Communities; and
  - (D) Geographic areas of this state.
- (b) The department may convene an advisory work group to inform the department on the department's engagement with stakeholders and development of the state energy strategy.
- (5)(a) The department shall ensure that the state energy strategy developed under this section reflects the best available information, data analyses and time horizons necessary to achieving the state's energy policy objectives.
- (b) The department shall periodically update the state energy strategy to reflect current information, data analysis and state energy policy objectives.
- (c) The department shall inform the Governor and Legislative Assembly when the department updates the state energy strategy.
- (6) The department may contract with third parties for assistance in performing the department's duties under this section, including assistance with technical or facilitation services.
- (7) All agencies of state government, as defined in ORS 174.111, are directed, to the extent permitted by laws relating to confidentiality, to furnish such information and advice to the department as the department considers necessary to perform the department's duties under this section.

**SECTION 3.** (1) The State Department of Energy shall produce a report regarding the state energy strategy developed under section 2 of this 2023 Act. The report, at minimum, must:

- (a) Summarize the state energy strategy and optimized pathways to achieving the state's energy policy objectives;
  - (b) Describe the department's engagement process with stakeholders and how stakeholder perspectives informed the state energy strategy; and
  - (c) Recommend legislation or changes to policy necessary to implement the state energy strategy.
- (2) The department shall submit the report produced under subsection (1) of this section to the Governor and the appropriate interim committees of the Legislative Assembly in the manner provided under ORS 192.245 no later than November 1, 2025.

**SECTION 4.** Section 3 of this 2023 Act is repealed on January 2, 2026.

## COUNTY ENERGY RESILIENCE PLANS

**SECTION 5.** (1) The Legislative Assembly finds that each county should plan for and develop energy resilience and be prepared, in the event of major grid disruption, to maintain basic services and functions.

(2) In order to carry out the provisions set forth in subsection (1) of this section, a county may:

(a) Develop and adopt an energy resilience plan; and

(b) Incorporate the energy resilience plan into the county's applicable natural hazard mitigation plan.

(3) An energy resilience plan developed under this section must:

(a) Be based on and plan for short-term, medium-term and long-term power outages.

(b) Identify and map:

(A) Existing energy infrastructure located within the county, including transmission lines, distribution lines, substations and energy storage systems;

(B) Natural hazard risks; and

(C) Communities that experience social vulnerability.

(c) Identify potential locations for community resilience centers and communication zones that the public may use to access electricity services during a power outage;

(d) Inventory the energy consumption needs of critical public services facilities;

(e) Identify critical public services facilities where the development of alternate energy generation and storage resources will meet local energy resilience needs;

(f) Identify opportunities to coordinate and locate energy infrastructure development to align with and support critical public services facilities;

(g) Identify time schedules, priorities and potential funding sources for developing energy resilience; and

(h) Identify other actions and resources needed to implement the energy resilience plan.

(4)(a) To identify and map communities that experience social vulnerabilities under subsection (3)(b)(C) of this section, a county shall consult with representatives from local environmental justice communities.

(b) A county shall use the locations of communities that experience social vulnerabilities to prioritize the potential locations of community resilience centers under subsection (3)(c) of this section.

(5) A public utility that is operating or serving customers within the boundaries of a county that is developing an energy resilience plan shall use reasonable efforts to assist with and comply with requests from the county for information regarding energy infrastructure that is located or serving customers within the boundaries of the county, provided that the information is exempt from disclosure under ORS 192.355.

(6) As used in this section, "critical public services facility" includes a facility related to law enforcement, fire protection, health and medical services, sanitation services, fuel and fueling, public works and engineering, public information and communications and emergency response.

**SECTION 6.** (1) The State Department of Energy shall establish a program for awarding grants to counties to cover the costs of developing energy resilience plans that meet the requirements under section 5 (3) of this 2023 Act.

(2) Under the program:

(a) A county shall use grant moneys to cover the costs of developing an energy resilience plan that meets the requirements listed under section 5 (3) of this 2023 Act;

(b) A county may be awarded a total of no more than \$50,000;

(c) Counties may combine and use together grant moneys that have been awarded to the counties;

(d) A county may use grant award moneys to cover:

(A) The salaries and expenses of county employees for the time the employees work on developing an energy resilience plan;

(B) The costs to hire or contract with a technical assistance provider; and  
(C) Any other necessary costs as approved by the department; and  
(e) The department may issue grant award moneys to a county or directly to a technical assistance provider or providers hired or contracted by the county.

(3) The department shall establish the:

- (a) Application process;
- (b) Eligibility criteria for awarding grants;
- (c) Process of awarding grants; and
- (d) Requirements for reporting on the use of grant award moneys by grantees.

(4) No later than September 15, 2025, the department shall submit a report in the manner provided by ORS 192.245 to the interim committees of the Legislative Assembly related to energy. The report must, at a minimum:

(a) Identify the counties that have received grants under the program and describe the status of the counties' energy resilience plans;

(b) Identify opportunities to incorporate county energy resilience plans into a state energy resilience plan and other planning efforts; and

(c) Make recommendations for improvements to the program and investments that would improve future planning efforts.

SECTION 7. Section 6 of this 2023 Act is repealed on January 2, 2026.

#### HOME ENERGY PROGRAMS

SECTION 8. (1) The State Department of Energy, in consultation with the Housing and Community Services Department, shall establish:

(a) A whole-home energy savings program to provide rebates to individual homeowners, multifamily building owners and aggregators for home energy efficiency retrofits; and

(b) A high-efficiency electric home rebate program to provide rebates for the purchase and installation of appliances and nonappliance upgrades.

(2) In establishing a program under this section, the State Department of Energy shall:

(a) Consult with stakeholders, including consumer-owned utilities, as defined in ORS 757.270, and investor-owned utilities, as defined in ORS 469.631; and

(b) Ensure the program maximizes benefits for applicants by leveraging federal and state resources.

#### STATE DEPARTMENT OF ENERGY SINGLE RESOURCE

SECTION 9. (1) The State Department of Energy shall create a single resource that provides to interested persons information, technical assistance and assistance in identifying contractors and financing options, related to available energy efficiency incentives and programs.

(2) The department shall coordinate information and data exchanges between federal and state agencies, private and public utility providers, and energy efficiency incentive or program providers as may be necessary to:

(a) Create and maintain the single resource described under subsection (1) of this section; and

(b) Support the implementation and reporting requirements of available energy efficiency incentives and programs.

(3) The department may contract with a nonprofit or other entity as may be necessary to carry out the provisions of this section.

(4) Entities that exchange, compile or maintain information or data under this section or that are involved in carrying out the provisions of this section shall use best practices to

maintain the confidentiality and security of the information and data as required by federal and state law, including the Oregon Consumer Information Protection Act and ORS 192.355.

#### APPROPRIATIONS

**SECTION 10.** (1) Notwithstanding any other provision of law, the General Fund appropriation made to the State Department of Energy by section 1 (1), chapter \_\_, Oregon Laws 2023 (Enrolled House Bill 5016), for the biennium beginning July 1, 2023, for energy development services, is increased by \$4,238,727 for the purpose of carrying out sections 2 to 8 of this 2023 Act.

(2) In addition to and not in lieu of any other appropriation, there is appropriated to the State Department of Energy, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$402,385, for the purpose of carrying out the provisions of section 1 of this 2023 Act.

**SECTION 10a.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 4, chapter \_\_, Oregon Laws 2023 (Enrolled House Bill 5016), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from federal funds collected or received by the State Department of Energy, is increased by \$48,859, for the purpose of carrying out sections 8 and 9 of this 2023 Act.

#### OPERATIVE DATE

**SECTION 11.** Sections 2 to 7 of this 2023 Act become operative on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

#### UNIT CAPTIONS

**SECTION 12.** The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

#### DECLARING EMERGENCY

**SECTION 13.** This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

**Passed by House June 14, 2023**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Dan Rayfield, Speaker of House

**Passed by Senate June 24, 2023**

.....  
Rob Wagner, President of Senate

**Received by Governor:**

.....M.,....., 2023

**Approved:**

.....M.,....., 2023

.....  
Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2023

.....  
Secretary of State

## Oregon Energy Strategy

*The Oregon Energy Strategy will identify pathways to achieving the state's energy policy objectives. The report will be informed by robust stakeholder engagement and help Oregon achieve emissions reductions in line with state energy and climate policy goals.*

### Oregon Energy Strategy Coming Soon!

The Office of Governor Kotek and the Oregon Department of energy are conducting a final review of the Oregon Energy Strategy. Thanks for your patience as we take a few extra days to roll out this important report.

#### About the Project

The Oregon Department of Energy is developing the Oregon Energy Strategy, which will identify pathways to achieve the state's energy objectives. The strategy will consider benefits and challenges of different pathways, present policy recommendations, and reflect input from Oregonians who informed the Strategy.

Developing the Oregon Energy Strategy will follow a process that combines data gathering, technical analysis, and policy discussions anchored in engagement with Oregonians with diverse backgrounds and perspectives from across the state. Following public comment on the draft report, the Oregon Energy Strategy will be presented to the Governor and Legislature by November 1, 2025.

#### Achieving Oregon's Energy Policy Objectives

As directed by **HB 3630** (<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>), the strategy will outline potential actions to meet the state's energy policy objectives, including reliability, affordability, and greenhouse gas emission reduction targets:

- Executive Order 20-04: Economy-wide 80 percent reduction in greenhouse gas emissions by 2050
- HB 2021: Clean electricity targets for Portland General Electric, Pacific Power, and covered electricity service suppliers, including 80 percent emissions reductions by 2030, 90 percent by 2035, 100 percent by 2040
- Climate Protection Program: 90 percent reduction in greenhouse gas emissions from natural gas, liquid fuels, and propane by 2050

(</energy/Data-and-Reports/Pages/Oregon-Energy-Strategy-Engagement.aspx>)

#### Exploring Energy Pathways

(</energy/Data-and-Reports/Pages/Oregon-Energy-Strategy-Engagement.aspx>)

The Legislature tasked ODOE with coordinating development of the Oregon Energy Strategy. However, many Oregonians are contributing to its development, and the state encourages feedback and input from a diverse range of perspectives, backgrounds, and experiences.

An **Interagency Steering Group** (</energy/Data-and-Reports/Documents/OES-Interagency-Steering-Group-Roster.pdf>) of state agencies is helping to guide development of the Oregon Energy Strategy. ODOE also formed an Advisory Group and several Policy Working Groups to help inform and provide feedback to the development of the report. Learn more:

- [Oregon Energy Strategy Advisory Group \(/energy/Data-and-Reports/Pages/Energy-Strategy-Advisory-Group.aspx\)](/energy/Data-and-Reports/Pages/Energy-Strategy-Advisory-Group.aspx)
- [Policy Working Groups \(/energy/Data-and-Reports/Pages/Energy-Strategy-Working-Groups.aspx\)](/energy/Data-and-Reports/Pages/Energy-Strategy-Working-Groups.aspx)

## Get Involved and Stay Updated

There are many opportunities to share input and contribute throughout the development of the Oregon Energy Strategy. Please **sign up** (<http://web.energy.oregon.gov/cn/a6n53/subscribe>) to receive email updates. We also encourage written comments to be submitted to the **Oregon Energy Strategy Comment Portal** (<https://odoe.powerappsportals.us/en-US/energy-strategy/>).

Additionally, all **Oregon Energy Strategy Advisory Group** (</energy/Data-and-Reports/Pages/Energy-Strategy-Advisory-Group.aspx>) and **Working Group** (</energy/Data-and-Reports/Pages/Energy-Strategy-Working-Groups.aspx>) meetings will be open to the public to listen in. Ways to engage:

- **Public Forums and Info Sessions** (</energy/Data-and-Reports/Pages/Oregon-Energy-Strategy-Engagement.aspx>)

## Oregon Energy Strategy Project Materials

Public outreach to develop and inform the Oregon Energy Strategy began in the spring of 2024. The report will be presented to the Governor and Oregon Legislature by November 2025. Materials, meeting information, supporting documents that help inform this project are available here:

(<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>)  
 (<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>)

- **HB 3630** (<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>)
- **Project Charter** (</energy/Data-and-Reports/Documents/2023-9-25-OR-Energy-Strategy-Project-Charter.pdf>)
- **Phase 1 Project Materials** (</energy/Data-and-Reports/Pages/Oregon-Energy-Strategy-Phase1-Archive.aspx>)
- **Oregon Energy Strategy Overview** (</energy/Data-and-Reports/Documents/OES-Project-Overview-Flyer-12-2024.pdf>)

(</energy/Data-and-Reports/Documents/OES-Project-Overview-Flyer-12-2024.pdf>)

## Accessibility

Oregon Energy Strategy Advisory and Working Group meetings, as well as Public Forums and Info Session, will include closed captioning, and ODOE can provide other resources, translation services, or other accommodations. Contact [energy.strategy@energy.oregon.gov](mailto:energy.strategy@energy.oregon.gov) (<mailto:energy.strategy@energy.oregon.gov>) with requests.

## Connect

Please email [energy.strategy@energy.oregon.gov](mailto:energy.strategy@energy.oregon.gov) (<mailto:energy.strategy@energy.oregon.gov>) with any questions and **sign up** (<http://web.energy.oregon.gov/cn/a6n53/subscribe>) to receive email updates about the Oregon Energy Strategy.

### PROJECT PAGES

**Engagement Opportunities** (</energy/Data-and-Reports/Pages/Oregon-Energy-Strategy-Engagement.aspx>)  
**Advisory Group** (</energy/Data-and-Reports/Pages/Energy-Strategy-Advisory-Group.aspx>)  
**Working Groups** (</energy/Data-and-Reports/Pages/Energy-Strategy-Working-Groups.aspx>)  
**Phase 1 Info Archive** (</energy/Data-and-Reports/Pages/Oregon-Energy-Strategy-Phase1-Archive.aspx>)

### PROJECT RESOURCES

**HB 3630** (<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3630/Enrolled>)  
 ([/oem/Documents/Oregon\\_Resilience\\_Plan\\_Final.pdf](/oem/Documents/Oregon_Resilience_Plan_Final.pdf))**Project Charter** (</energy/Data-and-Reports/Documents/2023-9-25-OR-Energy-Strategy-Project-Charter.pdf>)  
**Oregon Energy Strategy Overview** (</energy/Data-and-Reports/Documents/OES-Project-Overview-Flyer-12-2024.pdf>)  
 ([/oem/Documents/Oregon\\_Resilience\\_Plan\\_Final.pdf](/oem/Documents/Oregon_Resilience_Plan_Final.pdf))**Oregon Energy Strategy Q&A** (</energy/Data-and-Reports/Documents/Oregon-Energy-Strategy-QA-9-4-2024.pdf>)  
 ([/oem/Documents/Oregon\\_Resilience\\_Plan\\_Final.pdf](/oem/Documents/Oregon_Resilience_Plan_Final.pdf))**Phase 1 Public Comment & Response Document**  
 (</energy/Data-and-Reports/Documents/OES-Phase1-Comment-Response-Documents.pdf>)  
 ([/oem/Documents/Oregon\\_Resilience\\_Plan\\_Final.pdf](/oem/Documents/Oregon_Resilience_Plan_Final.pdf))**Terminology and Abbreviations List** (</energy/Data-and-Reports/Documents/OES-Terminology-Abbreviations.pdf>)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Reference Scenario - 9/24/2024 (/energy/Data-and-Reports/Documents/OES-Final-Reference-Scenario-9-24-2024.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Modeling Assumptions and Sources (/energy/Data-and-Reports/Documents/Oregon-Energy-Strategy-Modeling-Assumptions-Sources.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Energy Strategy Technical Approach (/energy/Data-and-Reports/Documents/OES-CETI-EER-Technical-Approach-to-Modeling.pdf) (/energy/Data-and-Reports/Documents/Oregon-Energy-Strategy-Modeling-Assumptions-Sources.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Complementary Analyses Technical Approach (/energy/Data-and-Reports/Documents/OES-Complementary-Analysis-Technical-Approach.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Energy Strategy Modeling Technical Report (/energy/Data-and-Reports/Documents/2025-OES-Technical-Report.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Energy Pathways Modeling Data Library (/energy/Data-and-Reports/Documents/2025-OES-Energy-Pathways-Modeling-Data-Library.xlsx)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf) Complementary Analysis: Technical Report (/energy/Data-and-Reports/Documents/2025-OES-Complementary-Analysis-Tech-Report.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf) Complementary Analysis Data Library (/energy/Data-and-Reports/Documents/2025-OES-Complementary-Analysis-Data-Library.xlsx)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Jobs Analysis Key Model Findings (/energy/Data-and-Reports/Documents/OES-Jobs-Analysis-Key-Findings.pdf)

Phase 2 Public Comment Compilation  
(/energy/Data-and-Reports/Documents/2025-OES-Phase2-Comments-compiled.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Energy Strategy Modeling Technical Report (/energy/Data-and-Reports/Documents/2025-OES-Technical-Report.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Draft Oregon Energy Strategy (/energy/Data-and-Reports/Documents/DRAFT-Oregon-Energy-Strategy.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Summary of Draft Oregon Energy Strategy (English)  
(/energy/Data-and-Reports/Documents/DRAFT-Summary-Oregon-Energy-Strategy.pdf)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Summary of Draft Oregon Energy Strategy (Spanish)  
(https://ishortn.ink/7pC2pyfai)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Summary of Draft Oregon Energy Strategy (Russian)  
(https://ishortn.ink/zMMWgiGdN)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Summary of Draft Oregon Energy Strategy (Chinese)  
(https://ishortn.ink/RFhA2XXWF)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Summary of Draft Oregon Energy Strategy (Vietnamese)  
(https://ishortn.ink/nb4NUTsZP)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Public Comments Received on Draft Oregon Energy Strategy  
(/energy/Data-and-Reports/Documents/2025-OES-Comments-on-Draft.pdf)

#### OTHER RESOURCES & PROGRAMS

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)2022 Policy Brief: Charting a Course for Oregon's Energy Future (/energy/Data-and-Reports/Documents/2022-Biennial-Energy-Report.pdf#page=386)

(/oem/Documents/Oregon\_Resilience\_Plan\_Final.pdf)Recommendations from the 2022 Biennial Energy Report (/energy/Data-and-Reports/Documents/2022-Biennial-Energy-Report.pdf#page=572) (/energy/Data-and-Reports/Documents/2022-Biennial-Energy-Report.pdf#page=386)

Oregon Climate Action Roadmap to 2030 & TIGHGER Project Report  
(https://energyinfo.oregon.gov/blog/2023/4/6/oregon-global-warming-commission-publishes-roadmap-to-2030-to-guide-state-climate-action)

Addressing Climate Change (/energy/energy-oregon/Pages/Climate-Change.aspx)

2023 Legislative Session Report  
(https://static1.squarespace.com/static/59c554e0f09ca40655ea6ebo/t/64275b98de28d74ea4a96dc3/1680300956035/2023-Legislative-Report.pdf)

Incentives (/energy/Incentives/Pages/default.aspx)

Energy Planning (/energy/energy-oregon/Pages/Energy-Planning.aspx)

(/energy/Data-and-Reports/Documents/OES-Project-Overview-Flyer-12-2024.pdf)

(/energy/Data-and-Reports/Documents/OES-Project-Overview-Flyer-12-2024.pdf)

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**Enrolled  
House Bill 2193**

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Energy and Environment)

CHAPTER .....

AN ACT

Relating to energy storage; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** As used in sections 1 to 3 of this 2015 Act:

(1) "Electric company" means an electric company, as defined in ORS 757.600, that makes sales of electricity to 25,000 or more retail electricity consumers in this state.

(2) "Energy storage system" means a technology that is capable of retaining energy, storing the energy for a period of time and delivering the energy after storage.

(3)(a) "Procure" means to acquire by ownership a qualifying energy storage system or to acquire by contract the right to use the capacity of or the energy from a qualifying energy storage system.

(b) "Procure" includes the acquisition of ancillary services that are related to an acquisition described in paragraph (a) of this subsection.

(4) "Qualifying energy storage system" means an energy storage system included in a project that the Public Utility Commission authorizes for development under section 3 of this 2015 Act.

(5) "Retail electricity consumer" means a retail electricity consumer, as defined in ORS 757.600, that is located in this state.

**SECTION 2.** (1) If authorized under section 3 (3) of this 2015 Act, an electric company shall procure, on or before January 1, 2020, as part of a project described in section 3 of this 2015 Act, one or more qualifying energy storage systems that have the capacity to store at least five megawatt hours of energy.

(2)(a) The total capacity of qualifying energy storage systems procured under this section by any one electric company may not exceed one percent of the electric company's peak load for the year 2014.

(b) The Public Utility Commission may waive the limit described in paragraph (a) of this subsection if the commission determines, in consultation with the State Department of Energy, that a qualifying energy storage system is of statewide significance and one or more electric utilities, as defined in ORS 757.600, participates in procuring the qualifying energy storage system and shares the costs and benefits associated with procuring the qualifying energy storage system.

(3) An electric company may recover in the electric company's rates all costs prudently incurred by the electric company in procuring one or more qualifying energy storage systems under this section, including any above-market costs associated with procurement.

**SECTION 3. (1) Not later than January 1, 2017, the Public Utility Commission shall by rule or order adopt guidelines for an electric company to use in submitting a proposal under subsection (2) of this section. In developing the guidelines, the commission shall:**

**(a) Examine the potential value of applying energy storage system technology, including:**  
**(A) Deferred investment in generation, transmission or distribution of electricity;**  
**(B) Reduced need for additional generation of electricity during times of peak demand;**  
**(C) Improved integration of different types of renewable resources;**  
**(D) Reduced greenhouse gas emissions;**  
**(E) Improved reliability of electrical transmission or distribution systems;**  
**(F) Reduced portfolio variable power costs; or**  
**(G) Any other value reasonably related to the application of energy storage system technology.**

**(b) Consider ways in which to encourage electric companies to invest in different types of energy storage systems.**

**(c) Consider any other factor reasonably related to the procurement of qualifying energy storage systems.**

**(2)(a) Not later than January 1, 2018, an electric company shall submit one or more proposals to the commission for developing a project that includes one or more energy storage systems.**

**(b) Each proposal submitted under this subsection must include an evaluation of the potential to store energy in the electric company's electric system, including an analysis of:**

**(A) The electric company's current operations and the electric company's electric system data, including customer-side data, distribution data, transmission data and data related to existing energy storage systems, including any energy storage system developed as part of a pilot or demonstration project. The analysis shall be used to identify areas in the electric company's electric system where there may be opportunities to incentivize the value potentially derived from energy storage systems.**

**(B) How the addition of an energy storage system would complement proposed actions submitted pursuant to any plan submitted to the commission in which the electric company has proposed an integrated, least-cost combination of resources to meet the expected needs of the electric company's customers.**

**(c) Each proposal submitted under this subsection also must include a description of each proposed project. The description must include:**

**(A) Technical specifications for each project, including:**

**(i) The capacity of the project to store energy;**

**(ii) The location of the project;**

**(iii) A description of the electric company's electric system needs and the application that the energy storage system will fulfill as the basis for the project;**

**(iv) A description of the technology necessary to construct, operate and maintain the project, including a description of any data or communication system necessary to operate the project;**

**(v) A description of the types of services that the electric company expects the project to provide upon completion;**

**(vi) An analysis of the risk that the electric company will not be able to complete the project; and**

**(vii) Any other reasonable technical specification required by the commission pursuant to the guidelines adopted under subsection (1) of this section.**

**(B) The estimated cost of each project, including:**

**(i) The estimated capital cost of the project;**

**(ii) The estimated output cost of the project; and**

**(iii) The amount of grant moneys available to offset the cost of the project.**

**(C) The benefits of each project to the electric company's electric system, including:**

- (i) Projected in-state benefits to the electric system;
- (ii) Projected regional benefits to the electric system; and
- (iii) The potential benefits to the electric company's entire electric system if the electric company installs the energy storage system technology that is the basis for the project system-wide.

(D) An evaluation of the cost-effectiveness of each project, conducted in a manner established by the commission by rule or order.

(d) The information and analyses required to be submitted to the commission under this subsection may contain critical energy infrastructure information, trade secrets and other confidential research, development or commercial information the public disclosure of which could threaten the security and safety of an electric company's electric system or allow unfair competition or business advantages. The commission may not use or allow the use of the information and analyses for any purpose other than the purposes described in this section and, in order to protect the information:

(A) Shall determine the procedures under which a person may view the information and analyses; and

(B) Shall adopt a protective order that includes reasonable restrictions requested by an electric company in good faith on removing material from commission offices, not allowing copying or photographing of the material, not allowing electronic transmission of the material or only allowing limited viewing of the material in restricted areas.

(3)(a) The commission shall consider each proposal submitted under subsection (2) of this section and evaluate each proposal to determine whether the proposal:

(A) Is consistent with the guidelines adopted under subsection (1) of this section;

(B) Reasonably balances the value for ratepayers and utility operations that is potentially derived from the application of energy storage system technology and the costs of construction, operation and maintenance of energy storage systems; and

(C) Is in the public interest.

(b) After considering the factors described in paragraph (a) of this subsection, the commission may authorize an electric company to develop one or more projects that include one or more qualifying energy storage systems.

(4) If authorized to develop a project under subsection (3) of this section, the commission may require an electric company to develop the project in accordance with any competitive bidding guidelines prescribed by the commission.

**SECTION 4.** In the manner required by ORS 192.245, the Public Utility Commission shall report on the implementation of sections 1, 2 and 3 of this 2015 Act to the interim committees of the Legislative Assembly related to energy:

(1) On or before September 15, 2016; and

(2) On or before September 15, 2018.

**SECTION 5.** This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

**Passed by House April 28, 2015**

**Repassed by House June 1, 2015**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

**Passed by Senate May 28, 2015**

.....  
Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2015

.....  
Jeanne P. Atkins, Secretary of State



825 NE Multnomah Street, Suite 2000  
Portland, Oregon 97232

December 2, 2024

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**Re: UM 1857—PacifiCorp’s Compliance Filing – Energy Storage Pilot and Evaluation Plan Update**

PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) submits for filing in compliance with Public Utility Commission of Oregon (Commission) Order No. 18-327, and modified by Order Nos. 19-242, 19-333, and 21-270, updated estimated benefits and costs associated with the Company’s energy storage pilot programs. Confidential information in this filing is provided in accordance with General Protective Order No. 17-274.

**Pilot Project 1—Energy Storage Solution**

On April 2, 2018, PacifiCorp selected for Commission approval in this docket the two megawatt/six megawatt-hour (MWh) base case energy storage solution as the preliminary sizing for the proposal, as described in Section 4.0 of the Final Oregon Energy Storage Project Proposal document (Pilot Project 1). This sizing met the minimum threshold of five MWh as set forth by House Bill 2193, accommodates the historic outage characterization on the feeder, and presented the lowest risk option given the information available to PacifiCorp at the time. PacifiCorp now provides an additional update on the current status of this project.

The Company originally planned to construct this project on land near the Hillview Substation in Corvallis, Oregon. After an exhaustive search of available property with willing property owners, it was determined that the only viable land would result in the removal of at least one residence and displacement of the occupant. Following consultation with Commission staff, PacifiCorp restarted the search for available property looking at other locations both in Corvallis and across PacifiCorp’s Oregon service territory. One location that is fed from the Lakeport Substation located in Klamath Falls, was identified as a good candidate that allows for all of the high-level use cases. The Company engaged in negotiations for the use of a portion of a vacant parcel of land on which the Company intends to acquire a termed exclusive easement. The easement was secured in September 2023.

The Owner’s engineering is being provided by an external engineering firm and was procured through competitive bid and awarded at the end of 2018. The Owner’s Engineer was selected based on lowest bid. The winning bid was for **[Begin Confidential]** [REDACTED] **[End Confidential]**. This cost is in addition to the internal engineering reviews and project management. The combined costs were originally estimated to be approximately \$60,000;

Docket UM 1857  
Public Utility Commission of Oregon  
December 2, 2024  
Page 2

however, based on current estimates and awarded contracts, this portion of the project is now estimated to be \$255,000. The Owner's Engineers have completed the conceptual design, interconnection application, and permitting review. Following the initial reviews performed by the Owner's Engineer, it was deemed that the Company's internal engineering team could review the detailed designs for a lower cost, therefore these services were shifted to PacifiCorp's internal engineering teams.

The engineering, procurement, and construction (EPC) request for proposals issued in 2019 did not receive any qualified bid responses. As a result the EPC contract has been split into three contracts. The Engineering contract was awarded in December of 2019 for **[Begin Confidential]** [REDACTED] **[End Confidential]**, which was in line with the updated total project estimates. The equipment vendor has been selected and the agreement executed in 2020 for approximately **[Begin Confidential]** [REDACTED] **[End Confidential]**. The Construction contract was competitively bid in Q4 of 2023 after design was completed and the generation interconnection approval granted. Based on the Q4 2023 construction bid, physical construction of the facility was expected to occur starting in December 2023 through April 2024, but completion has been delayed due to battery energy storage system (BESS) supplier contracting issues. The project is now planned to go into service by mid-2025. The project is currently two years behind the previous report in service dates of mid 2023 due to changes in the cyber security and communication requirements that required additional engineering, procurement, and renegotiations with the BESS supplier. The project is 75 percent constructed and ready for the BESS equipment once contract terms can be reached with the supplier.

This project is subject to the generation interconnection process. This review and acceptance process requires the project to apply for a position in the interconnection queue once property rights have been obtained. The Company submitted this project for generation interconnection review in 2020 and it was placed in the spring 2021 queue. Project approval and construction started in fall 2023 for commercial operation in spring 2025.

Finally, the cost of interconnecting the battery system to the distribution system was originally estimated at \$550,000 but is now estimated at \$609,000 based on the current design.

### **Pilot Project 2—Community Resiliency Pilot**

In the stipulation filed in docket UM 1857 by PacifiCorp on July 18, 2018, and adopted by the Commission in Order No. 18-327 (September 4, 2018), PacifiCorp committed to developing a Community Resiliency Pilot (Pilot Project 2) to provide technical and financial assistance to study and deploy energy storage resources to facilities critical to emergency response or disaster recovery. The stipulation laid out a phased approach for Pilot Project 2, beginning with a consultant-led technical assistance concept resulting in a limited number of initial studies (Phase I), followed by financial assistance for the installation of energy storage resources for up to four critical facilities (Phase II).

In Order No. 18-327, the Commission authorized PacifiCorp to recover up to \$200,000 in Phase I of Pilot Project 2. Upon completion, PacifiCorp agreed to file a final Phase I report and a revised plan estimating the costs and identifying the anticipated benefits of expanding the Pilot Project 2 into Phase II.

On December 18, 2020, PacifiCorp filed its final Phase I report for the Pilot Project 2. That report contained several notable learnings:

- 1) Battery energy storage can reduce critical facility dependency on fuel deliveries and infrastructure corridors that provide relief services during disaster events, contributing to a more resilient back-up system than a standard back-up generator alone may provide.
- 2) There are limited funding opportunities to develop battery energy storage resources, and current rates do not incentivize energy storage. In the absence of an economic case to support battery energy storage adoption, the Pilot Project 2 suffered lower-than-expected participation and follow-through from initial conversations with many potential program participants.
- 3) Commercial facilities' adoption rates of battery energy storage systems in Oregon remain low, in part because the economics of battery energy storage are not competitive with the alternative fossil fuel back-up power options. Appropriately designed policy mechanisms—including incentives, grant funding programs, and beneficial tariff design—can encourage battery energy storage adoption and promote widespread resiliency benefits throughout Oregon.
- 4) As adoption of commercial-scale battery energy storage resources increases, PacifiCorp will need to develop its capabilities to effectively manage battery energy storage resources in order to harness the associated grid services benefits for its ratepayers.

Based on those learnings, PacifiCorp believed that an expanded community resiliency offering had the potential to offer an array of benefits to its critical facility customers and the communities they serve, its ratepayers, and the Oregon battery energy storage industry.

On August 26, 2021, Order No. 21-270 approved Phase II of PacifiCorp's Pilot Project 2. Outlined in the proposal were the intentions of the Company to provide up to 10 technical feasibility studies to leadership of critical facilities interested in learning more about how battery storage might increase resiliency at their site. Additionally, PacifiCorp was approved to make battery storage project development funding available during two competitive solicitation periods. Criteria would consider likelihood of project success, amount of funding requested, and diversity of project location and facility type. Applicants would be allowed to request grant funding of up to 100 percent of project cost. In exchange for grant funding, the customer would allow PacifiCorp to actively manage a portion of the battery system during normal facility

operations. Approval of up to \$200,000 was given for technical feasibility studies, as well as up to \$1,300,000 for the funding of on-site battery storage systems.

As per the requirements in Order 21-270, PacifiCorp held a stakeholder workshop on September 20, 2021. The topics covered included a general overview of the program, proposed timelines, identified research objectives, grant selection criteria and immediate next steps.

The first of two grant application submission windows was opened on October 11, 2021. The window was scheduled to close on January 14, 2022, but the Energy Trust of Oregon, speaking on behalf of facilities working to complete applications, requested the window remain open for an additional month. With Commission Staff approval, the application submission window remained open until February 18, 2022.

PacifiCorp received one application for grant funding during this first window. That application request was later rescinded, as the applicant had later determined the need for reallocation of internal funding sources.

The second grant application submission window opened on August 1, 2022, and closed on October 28, 2022. Two applications were submitted. Both applications were approved, but one project was later rescinded by its project manager. Grant funding for the second project will be awarded upon confirmed installation and interconnection of the battery system.

Technical feasibility studies have been provided on a “rolling” basis, beginning at the commencement of the initial grant application submission window. To date, ten studies have been provided to customers.

Upon award of the outstanding grant, PacifiCorp intends to sunset Pilot Project 2.

**Additional Items**

Since Pilot Project 1 is not yet in service, the Company is unable to provide a “a narrative of EIM benefits that have been achieved,” or a “quantitative evaluation of the costs and benefits of the ESS in Project #1 relative to all other ESSs operated by PacifiCorp, and a narrative discussion on whether any learnings from PacifiCorp’s other storage projects can be applied in Oregon” at this time.

Please direct any informal correspondence and questions regarding this filing to Cathie Allen Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,



Matthew McVee  
Vice President, Regulatory Policy and Operations

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of **PacifiCorp's Annual Update on Pilot Programs** was served on the parties listed below via electronic mail in compliance with OAR 860-001-0180.

### Service List UM 1857

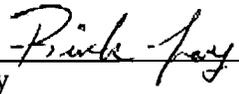
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Dated this 2<sup>nd</sup> day of December, 2024.

  
 \_\_\_\_\_  
 Rick Loy  
 Coordinator, Regulatory Operations



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September 2, 2021

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street, S.E.  
P.O. Box 1088  
Salem, OR 97308-1088

**RE: PGE UM 1856 PGE Draft Storage Potential Evaluation  
2021 Annual Energy Storage Update**

Pursuant to Public Utility Commission of Oregon (OPUC or Commission) Order No. 18-290, Portland General Electric Company (PGE) submits its third annual report on the progress of its energy storage proposal which includes: Baldock, Coffee Creek, Microgrid pilot, Port Westward 2 (PW2), Residential Storage pilot (called the “Smart Battery Pilot”), and the controls for the energy storage systems. During operation of the projects, PGE will submit comprehensive evaluations in the third, sixth, and tenth operating year, along with annual progress updates. The following report details each project and includes progress, challenges, and preliminary learnings, as available. As discussed further in this update, with the exception of the microgrid and Smart Battery pilots, several projects are delayed due to the COVID 19 pandemic and its business and social distancing consequences.

History of Energy Storage Docket

The Commission opened Docket No. UM 1751 in September 2015 to implement House Bill 2193, which requires Oregon electric companies (PGE and PacifiCorp) to submit proposals by January 1, 2018, to procure qualifying energy storage systems with capacity to store at least five megawatt hours of energy. PGE met this requirement and has procured 11 MWh of energy storage (Port Westward 2 and a Microgrid site Beaverton Public Safety Center) as of December 31, 2019.

PGE filed its energy storage proposal and final Energy Storage Potential Evaluation on November 1, 2017, which were reviewed in this docket. Order 18-290 partially approved and modified the stipulation and provided conditional approval on the following projects:

- **Energy Storage Potential Evaluation** – Prior to moving forward with any of the projects, PGE will submit a detailed written explanation of a plan to improve its energy storage modeling capability to estimate all energy storage benefits as directed in Order Nos. 17-118 and 17-375. This will be submitted to OPUC Staff (Staff) where they will evaluate and determine approval to allow PGE to move forward with all projects.
- **Baldock Mid-Feeder Project** – Submit a site analysis to Staff where they will evaluate and determine whether adequate evidence has been provided to allow PGE to move forward with the project.

- **Coffee Creek Substation Project** – Similar to Baldock, submit a site analysis for evaluation by Staff. In addition, PGE is to submit a justification for utility ownership.
- **Residential Storage Pilot** – Submit an addendum that details how PGE will optimize learnings and mitigate risks to Staff where they will evaluate and determine whether adequate evidence has been provided to allow PGE to move forward with the pilot.

## 2021 Annual Energy Storage Update

### *Baldock Mid-Feeder Energy Storage System*

This project will develop and build a 2 MW, two-hour energy storage system adjacent to PGE's Baldock Solar facility and will be interconnected to the Canby-Butteville feeder. The final project energy rating (MWh) will be determined based on the proposal pricing received and space availability.

PGE has prepared the Request for Proposal (RFP) for this project, but due to economic conditions stemming from the COVID-19 pandemic, this project has been delayed to 2022. PGE still plans to issue the RFP in late 2021 for evaluation.

### *Coffee Creek Substation Energy Storage System*

This project will develop and build a 17-20 MW, four-hour energy storage system sited and interconnected at PGE's Coffee Creek Substation. The final project rated capacity will be determined based on the proposal pricing received.

Due to economic conditions stemming from the COVID-19 pandemic, this project has been delayed to 2022. PGE still plans to reissue the RFP in late 2021 for revised pricing and re-evaluation.

### *Microgrid Pilot*

This project will develop and build two microgrids and will serve either single customers or a subset of customers.

PGE and the City of Beaverton signed an agreement to deploy the first energy storage microgrid at the Beaverton Public Safety Center in 2019 under this pilot. The project consists of a 250 kW, four-hour battery owned and operated by PGE. The battery is paired with a 300 kW PV solar array owned by the customer, and a backup diesel generator also owned by the customer. Since being energized in September 2020, the distribution system serving the Beaverton Public Safety Center has experienced two outages: September 7, 2020 and October 5, 2020. On both occasions, the microgrid system provided emergency power to the site. However, the system performance was not as rapid as was desired. The problems were related to firmware within the battery system inverters. New firmware has been created by the manufacturer and is being installed on September 13, 2021. At that time, the system will be re-commissioned.

The battery has been dispatched to deliver bulk energy services, including portfolio resource optimization (demand response) and frequency response. The system had issues with availability that have largely been resolved and now provides frequency response reliably and demand response when requested.

PGE and the Oregon Military Department have signed an agreement to deploy the second energy storage microgrid at the Anderson Readiness Center under this pilot. This project consists of a 500 kW, two-hour battery owned & operated by PGE. PGE issued the RFP in February 2021. In June 2021 PGE awarded the contract and design and equipment procurement is currently underway. It is expected that this project will be energized in Q2 2022.

Both microgrid sites are designed to support community resiliency.

#### *Port Westward 2 (Generation Kickstart) Energy Storage System*

This project will develop and build a 5 MW, two-hour energy storage system at PGE's Port Westward 2 Generating Station (PW2). This energy storage system will be coupled with one of PW2's reciprocating engines. The project will enable the combined resource (i.e. the energy storage system and a PW2 reciprocating engine) to qualify as spinning reserve, even when the engine is not running.

The project design work was completed in November 2020 and the BESS equipment was delivered to site in December 2020. Construction and controls integration work has continued through August of 2021. Backfeed power will be available to the BESS in September 2021 to start the testing and commissioning process. The project is currently scheduled to be in service in October 2021.

#### *Residential Storage Pilot*

PGE's Smart Battery Pilot seeks to integrate up to 525 customer-owned residential storage units as a dispatchable resource providing grid services. During grid outages, the energy storage system provides back-up power to participating residences. In exchange for allowing PGE to operate the battery for grid services, a customer receives \$20 or \$40 per month. Customers within the Smart Grid Testbed are also eligible for an up-front rebate to encourage the density that will be needed to test locational benefits, and income qualified customers participating in the Energy Trust of Oregon's (ETO) Solar Within Reach program are also eligible for an up-front rebate so that PGE may better understand the needs of a diverse set of customers.

This was the first full year of the residential pilot since the Schedule 14 tariff became effective in August 2020. There are presently 50 customers enrolled in the pilot as of August 2021 with a total capacity of around 400 kW or 1MWh.

#### *Operational Readiness*

The previous update was filed a few weeks after the tariff approval of this project. Since the last filing PGE has achieved many tasks to be able to recruit, enroll, and dispatch customer owned batteries. A non-exhaustive list includes finalizing PGE's collaboration with the ETO as an implementation partner responsible for trade ally management and rebate payments; the ability

for PGE to provide customer on-bill credits, integration of this Pilot with the existing interconnection processes and software, marketing materials and customer-facing website, and the IT integration and customization of the Virtual Peaker software to be able to enroll customers and dispatch batteries. Additionally, staff procedures and training were needed as the Company interacts with customers and distributed energy storage in new ways.

#### Customer Recruitment and Outreach

PGE has conducted multiple outreach events to educate and invite customers to learn about the pilot, the benefits of energy storage systems and the rebates available to customers. In April 2021, PGE sent targeted marketing materials via email or post card to Smart Grid Test Bed customers who currently have solar or have been identified as being interested in a solar + battery solution. PGE also sent the same marketing materials to current solar customers and customers identified as being interested in a solar plus battery solution in PGE's service area. The attached documents are the marketing materials sent to customers.

PGE was initially meeting its recruitment goals primarily through the enrollment of customers with existing qualified devices, though uptake has slowed as PGE has captured most of these customers. While the Company continues to work on new ways to communicate with customers and has been in close partnership with our partners at the ETO on recruitment activities, the Covid pandemic, nationwide shortage of energy storage devices, and supply chain issues mean that new installations are slower than expected. PGE is optimistic that the extension of the state rebate (\$2,500 from ODOE), a potential ITC refresh (30% Federal tax credit), and ETO's planned Solarize campaigns within the Hillsboro and Milwaukie Test Beds can provide a boost to energy storage adoption and enrollment.

PGE also has information about the program on its website at [portlandgeneral.com/smartbattery](http://portlandgeneral.com/smartbattery). The website provides details about the Smart Grid Test Bed incentives and the on-bill rewards available to all customers. Finally, the website provides a link to the ETO's website for customers interested in buying a storage system. Customers can submit a request to receive a bid from any of the trade allies working with ETO.

In July 2021 PGE launched the PGE Smart Battery Community in an effort to better engage current participants of the PGE Smart Battery Pilot. Also known as *Customer Conversations*, this platform is a market research online community (MROC) intended to help PGE better serve its customers by giving them a chance to talk to one of PGE's market researchers and pilot team through a series of discussions and activities. Community participants can interact with each other as well. This community is invitation-only and is monitored by a PGE market researcher. As of August 11, 2021, this community is comprised of 14 participants who have visited the community an average of three times, with the most frequent users interacting with the community 10 times since launching.

This platform is valuable because it allows the Storage & Resiliency Team to

- Better understand the desires, tensions, and motivations of the Pilot Participants
- Connect Pilot Participants to one another in an organic, engaging way
- More effectively evaluate real-time impacts of the Pilot

## Dispatches and Technical Discovery

After surveying the residential battery landscape in 2019, PGE issued an RFI to residential battery manufacturers and of the respondents PGE qualified the following five Original Equipment Manufacturers (OEMs) for participation in the residential pilot: Tesla, Solar Edge, Generac, Sunverge, and Sonnen. These five OEMs were selected based on their products' market readiness, customer experience, technical capabilities, products' ease of installation and configuration, warranty, supply chain, product availability in the region, and ability to integrate their batteries into PGE's grid for PGE's control and operation.

In the summer of 2020, PGE procured and installed five batteries (one from each selected OEM) for testing, measurement, and experimental purposes. Concurrently, PGE began recruiting participants into the pilot. To connect the residential batteries to PGE's distribution systems, PGE selected two aggregation platforms for evaluation: Virtual Peaker and Kitu Systems. Virtual Peaker provides communication and controls for the residential batteries using custom proprietary APIs while Kitu systems uses standard IEEE DER communications protocol. PGE is interested in testing which of these two aggregation platforms presents a better opportunity for integration into PGE's operations.

Phase 1 of the Grid Edge testing was performed on PGE-owned batteries, located at PGE facilities. Prior to dispatching customer devices PGE tested all use cases and integration capabilities on the five test batteries, one for each of the represented brands on the qualified products list. This research was valuable to yield information about the use cases that the manufacturers would enable each device to perform and uncover any limitations to the grid services enabled to be dispatched by each manufacturer. The Phase 1 work also involved integrating PGE's DRMS software Virtual Peaker with PGE's local DERMs, to allow batteries to be dispatched automatically according to grid needs, rather than manually through the dispatch software.

Another Phase 1 activity was testing the accuracy of the inverter metrology output as compared to PGE's utility grade metering. PGE concluded that there is no significant difference between the data from the OEM inverter data and PGE's meter data. This information is an important finding for future development efforts, should PGE wish to implement a pay-for-performance model or make billing adjustments based on battery activity for any future iterations of the program.

Currently, all five battery OEMs prefer to communicate using custom APIs, while only two of the five OEMs, were able to support IEEE DER communication to PGE. As a result, all current and prospective participants of the pilot are being set up on the Virtual Peaker aggregation platform. As the IEEE DER communication standards continues to gain widespread adoption, PGE anticipates that the other battery OEMs will present opportunity to be integrated into Kitu Systems' aggregation platform.

On January 26, 2021 PGE conducted its first customer owned residential battery dispatch by requesting 50kW from enrolled customer batteries, thus kicking off Phase 2 of the dispatch of

customer devices. The call was scheduled from 7 to 9 AM. At the time the program had 18 participating customers who collectively contributed 56.3kW to PGE's grid. As seen in Figure 1, the participating devices responded to PGE's dispatch signal, but the resultant power curve was jagged, versus the desired flat output of power.

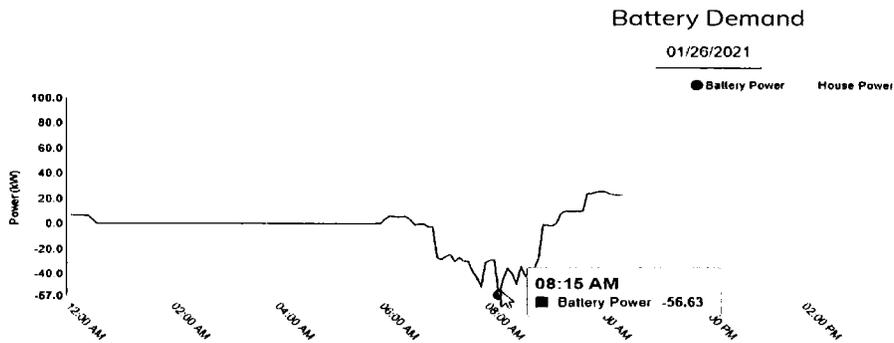


Figure 1

PGE has continued to dispatch the battery fleet alongside PGE's other demand response resources for weather related grid needs, including the unprecedented heat dome that occurred in June of 2021. The dispatch signal was revised and refined to be able to generate a smooth energy curve and provide a better customer experience. The total contribution of the battery fleet to PGE's grid since inception of the project is about 1 MW.

In addition to performing traditional demand response for generation capacity purposes, the PGE team has been methodically working through the other grid services outlined in the UM 1856 filing. Notably, PGE successfully demonstrated that residential customer batteries can perform fast frequency response, which the project team had not thought possible during development of the pilot. While thus far only tested with one PGE-owned test battery, the capability is a promising new value stream. Since fast frequency response is dispatched in response to a major grid disruption that cannot easily be tested PGE has reached out to Portland State University's power lab to coordinate for access to a grid simulator to perform further testing.

Looking into 2022 and beyond, the Grid Edge team will continue to work with PGE's software vendor Virtual Peaker on integration upgrades that will enable additional grid services like Volt/VAr and autonomous frequency response. Other software enhancements PGE would like to pursue include relative dispatch of the devices (currently PGE can only dispatch in absolute terms- for example, the desire would be able to ask for 50% of the available capacity, versus currently we could only ask for 2.5 kW from each customer); and updating the software to enable the batteries to continue to charge from solar power while on Standby mode.

PGE has also contracted with a third-party vendor to complete a data collection and performance analysis plan, and PGE looks forward to implementing this dispatch plan to ensure that relevant data and information is generated to be evaluated upon conclusion of the Pilot. Further work will also be done to standardize the onboarding process of new customers and the exercises that each

new customer will go through to ensure customers are receiving the correct monthly incentive and the functionality of their device.

*Energy Storage Modeling Capability*

On January 1, 2021, the Electric Power Research Institute (EPRI) completed its valuations of our 3 PGE-sided BESS projects (Baldock Mid-Feeder Project, Coffee Creek Substation Project, and Port Westward 2 Project) under UM 1856, with reports in the form of PowerPoint presentations. These valuations took into account locational operating restrictions or use cases and ran an evaluation of the stacked benefits of energy storage under those conditions using their StorageVET software. Through this process, it became clear that BESS projects have the highest value as generation capacity resources. There is also potential value in providing frequency regulation and Energy Imbalance Market (EIM) participation. Further, as expected, prioritizing locational use cases or restrictions has an impact on the overall quantifiable benefits of the system but may confer other benefits which are harder to quantify in dollar value, such as incremental decarbonization.

Please direct any questions regarding this filing to Chris Pleasant at (503) 464-2555. Please direct all formal correspondence and requests to the following email address [pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com)

Sincerely,

\\ Robert Macfarlane

Robert Macfarlane  
Manager, Pricing & Tariffs

cc: UM 1856 Service List

# Smart Battery Pilot-Marketing Materials

Image No. 1 Postcard sent to Solar/Battery targets

**Resiliency at home.  
Intelligence on the grid.**

Get an important rebate of up to \$3,000 on a home battery system.

**PGE** An Oregon kind of energy.

**Request a bid to reserve your \$3,000 rebate**

As part of our Smart Grid Test Bed, you can help us incorporate more renewable energy by adding a battery storage system to your home. A battery gives you back-up power if there's an outage.

It's even better when combined with solar panels.

For a limited time, you can get an instant rebate of up to \$3,000 by installing a qualified battery system and earn monthly bill credits as long as you participate in the PGE Smart Battery Pilot program. Based on our data, your home is a good candidate for this program. Ask for a bid from an Energy Trust of Oregon, so you can start early to get started.

**Hurry! Rebates are limited. Claim yours today.**

For more information:  
[portlandgeneral.com/batteryrebate](http://portlandgeneral.com/batteryrebate)

Image No. 2 Communication sent to Solar Customer.

**PGE SMART BATTERY PILOT**

**BE PREPARED FOR AN OUTAGE, HELP INCREASE RENEWABLES ON THE GRID AND EARN BILL CREDITS**

We need your help to create a dynamic grid that's powered by renewables and to keep rates low for everyone. Collaborate with us on clean energy solutions today and tomorrow by joining the PGE Smart Battery Pilot.

- Be power resilient**  
Install a qualifying smart home battery system and be prepared with back-up power in the event of an outage.
- Get paid to connect**  
Earn a bit credit of up to \$40 per month and help build a modern grid that's cheaper, cleaner and more responsive to our changing energy needs.
- Help increase renewable energy**  
Connect a qualifying smart home battery to the grid and help create a modern energy system that incorporates more low-cost, renewable power for everyone.
- Work with an Energy Trust of Oregon solar trade ally contractor**  
We're working with the Energy Trust of Oregon to increase the benefits of your home solar energy system by including a smart battery. Your Energy Trust trade ally contractor will:
  - Confirm that your home is right for a battery and solar
  - Provide a bid that clearly shows your cost after rebates, incentives and tax credits
  - Estimate your annual energy generation and monthly savings
  - Discuss financing options
  - Take care of permits, utility interconnection and incentive paperwork
  - Install your system

**WHAT'S OUR GOAL?**

The PGE Smart Battery Pilot will include nearly 100 homes in the center of the city. We're looking for customers who can help us build a modern energy system that incorporates more low-cost, renewable power for everyone.

**HERE'S HOW TO CONNECT**

- 1 Get started today**  
Sign up to connect with an Energy Trust of Oregon trade ally contractor at [energytrust.org/solarbid](http://energytrust.org/solarbid). The contractor will help determine whether your home qualifies for the pilot and, if so, provide you with a bid for installation.
- 2 Install your system**  
Prior to installation, your trade ally will guide you through the installation process and help you connect your system to PGE's grid.
- 3 Enroll in the pilot**  
PGE will send you a link to enroll in the PGE Smart Battery Pilot so you can begin earning bill credits.

For more information, please visit [portlandgeneral.com/smartbattery](http://portlandgeneral.com/smartbattery)

**START EARNING REWARDS**

**\$1,000**

Each 25 kWh of solar ETOE credit you generate will earn you a bill credit of up to \$1,000. Receive a bill credit every 3 months for the first 12 months of your system's operation.

**\$5,000**

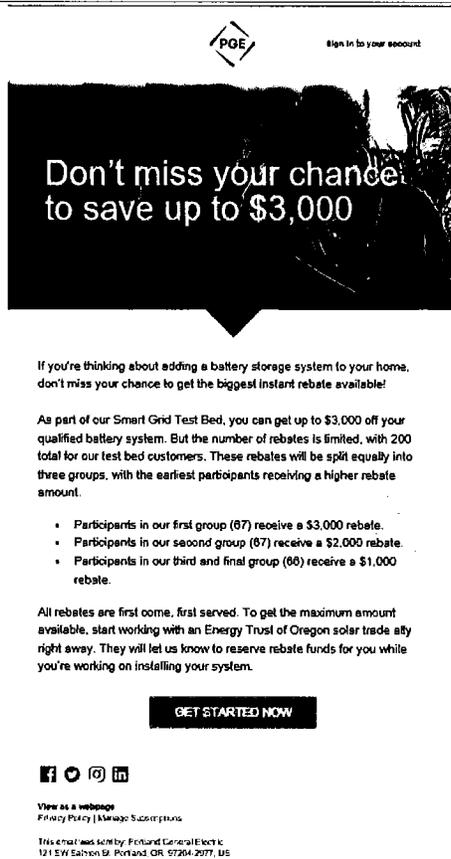
Each 25 kWh of solar ETOE credit you generate will earn you a bill credit of up to \$5,000. Receive a bill credit every 3 months for the first 12 months of your system's operation.

**\$40**

Each 25 kWh of solar ETOE credit you generate will earn you a bill credit of up to \$40. Receive a bill credit every 3 months for the first 12 months of your system's operation.

**PGE** An Oregon kind of energy.

Image No. 3 Communication sent via email to 40,310 residents in the Smart Grid Test Bed



The image shows an email advertisement for a battery storage rebate. At the top left is the PGE logo, and at the top right is a link to "Sign in to your account". The main headline reads "Don't miss your chance to save up to \$3,000" over a dark background with a silhouette of a person. Below this, the text explains that as part of the Smart Grid Test Bed, customers can get up to \$3,000 off a qualified battery system, with 200 total rebates split into three groups. A bulleted list details the rebate amounts for each group. A "GET STARTED NOW" button is centered below the text. At the bottom, there are social media icons, a "View as a webpage" link, a "Privacy Policy | Manage Subscriptions" link, and the PGE contact information.

**PGE** Sign in to your account

## Don't miss your chance to save up to \$3,000

If you're thinking about adding a battery storage system to your home, don't miss your chance to get the biggest instant rebate available!

As part of our Smart Grid Test Bed, you can get up to \$3,000 off your qualified battery system. But the number of rebates is limited, with 200 total for our test bed customers. These rebates will be split equally into three groups, with the earliest participants receiving a higher rebate amount.

- Participants in our first group (67) receive a \$3,000 rebate.
- Participants in our second group (67) receive a \$2,000 rebate.
- Participants in our third and final group (66) receive a \$1,000 rebate.

All rebates are first come, first served. To get the maximum amount available, start working with an Energy Trust of Oregon solar trade ally right away. They will let us know to reserve rebate funds for you while you're working on installing your system.

**GET STARTED NOW**

[View as a webpage](#)  
[Privacy Policy](#) | [Manage Subscriptions](#)

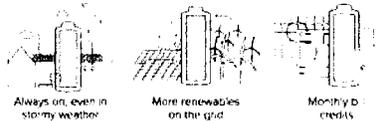
This email was sent by Portland General Electric  
121 SW Salmon St. Portland, OR 97204-2977, US

Image No. 4 Communication sent via email to customers with batteries recently installed and expressed interest in the pilot.



As the owner of solar panels and a home battery storage system, you're already helping lead the way toward Oregon's clean energy future. Now you can get even more out of your system by joining the PGE Smart Battery Pilot.

Connect your battery to PGE and help us store renewable power from the grid for when it's needed. You'll be part of a modern grid that's cleaner, cheaper and more responsive.



By letting us store and use energy in your battery, you'll be helping keep costs low for everyone. We'll make sure you always have backup power in the event of an emergency or outage, and you'll earn \$20 to \$40 a month as a credit on your bill.

#### Signing up is easy

Just click on the Enroll Now button below and give us a little information about your battery. After we receive your information, we'll contact you to schedule a quick safety verification. Once the battery has been verified, you'll begin receiving your bill credit each month.

Thank you for helping us shape Oregon's clean energy future — we need you!

**ENROLL NOW**

[Want to know more?](#)

## Smart Battery Website.

All of the information about the program can be found on our website [www.portlandgeneral.com/smartbattery](http://www.portlandgeneral.com/smartbattery). This website was designed to provide information about the benefits of owning a Storage System, whether it is paired with a solar system or not, details about the Smart Grid Test Bed incentives, and the on-bill rewards available in all PGE's territory. The site also has a link to direct customers to the Energy Trust of Oregon website for customers interested in buying a Storage System to submit a request to receive a bid from any of the trade allies working with Energy Trust of Oregon.

## Image No 5 PGE Smart Battery Website.

portlandgeneral.com/about/who-we-are/innovative-energy/smart-battery-pilot

Apps | Scheduling | Tools | Learning

### Join the PGE Smart Battery Pilot

Help build Oregon's clean energy future and earn cash rewards

Home > About > Smart Battery Pilot

What can a battery storage system do for you? You might be surprised.

- You can rely on back-up power if there's an outage.
- You can earn monthly credits as part of the PGE Smart Battery Pilot program.
- You'll get the most of your solar panels.
  - A battery lets you store the energy you generate during the day.
  - You can then use that renewable energy at night.

Right now, it's more affordable than ever to add a battery to your home. For a limited time, PGE is offering instant rebates of up to \$3,000 for customers in our Smart Grid Test Bed, or \$5,000 for customers participating in Solar Within Reach.

Interested? Start by asking for a quote from an Energy Trust of Oregon solar trade ally. It takes just a few minutes.

[Request a quote](#)

Always on, even in stormy weather

More renewables on the grid

Monthly bill credits

Feedback

Image No. 6 Hyperlink to Energy Trust of Oregon.

The screenshot shows a webpage section titled "How the pilot works". It contains three expandable items, each with a downward arrow on the right:

- If you already have a battery energy storage system
- If you don't have battery storage
- Qualifying battery storage systems

Below this is a section titled "Get cash" with the text "You'll earn cash rewards for participating in the program:". It lists three bullet points:

- Earn \$20 a month if your battery can only charge from your solar system. Earn \$40 a month if your battery can charge from the PGE system and/or your solar.
- Up to 200 Smart Grid Test Bed customers will also receive an instant rebate of \$1,000 to \$3,000 toward the cost of installing a battery.\*  
Learn more.
- Up to 25 income-qualified customers will receive a \$5,000 instant rebate toward the cost of installing a battery energy storage system when also participating in the Energy Trust's Solar Within Reach program.\*

At the bottom of the section are three buttons:

- Have a battery? Email us
- Need a battery? Get started!
- Hyperlink to Energy Trust of Oregon

A vertical black bar with the text "Fidelity" is visible on the right side of the screenshot.

Image No. 7 Energy Trust of Oregon form to request a purchase and installation bid of a Storage System



## Battery Pilot

You are taking the first step to participating in the **Portland General Electric (PGE) Smart Battery Pilot!** Energy Trust is working with PGE to connect you with a network of licensed and insured solar trade ally contractors experienced with the design and installation of both solar and home battery systems. In order to participate in the Smart Battery Pilot you must work with an approved solar trade ally, however you are not required to install solar. The trade ally contractors can provide you a bid to install a solar plus home battery storage system, add a home battery to an existing solar installation or install a standalone home battery without solar. Once you complete and submit this form, Energy Trust will match you with qualified solar trade ally contractors in your area based on the information you provided for you to choose from. The trade allies will:

- Assess the potential of your rooftop or property for solar power, if you are interested in pursuing a **solar + home battery storage installation**
- Provide a customized bid with estimated incentives, tax credits, and utility cost savings so you can see the net costs for your system
- Answer any questions you have about incentives and tax credits, equipment and installation, operation and maintenance

Let's get started!

This proposal is for my \*

Home



November 13, 2025

RECEIVED

NOV 13 2025

Marion County  
Planning

Via Email

Marion County Planning Division  
5155 Silverton Rd. NE, Salem OR 97305  
[planning@co.marion.or.us](mailto:planning@co.marion.or.us)

**RE: Santiam Water Control District Supplemental Comments to Remington BESS  
Administrative Review 25-015**

Santiam Water Control District ("SWCD") appreciates the opportunity to provide supplemental comments on the Remington BESS ("Applicant") appeal of the Planning Division Decision. SWCD previously submitted comments on July 17, 2025 and November 5, 2025 regarding the Remington BESS application ("Application").

These supplemental comments provide additional information related to questions raised at the November 6, 2025 hearing regarding the Application's impacts on established farm practices and whether SWCD concerns are otherwise addressed by Oregon law.

- 1. If the Remington BESS facility ("Facility") is considered a utility facility necessary for public service under MCC 17.136.040(I) then it is subject to county code conditions to protect the surrounding farm practices.**

Oregon law requires that the county impose "clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, 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 surrounding farmlands." OAR 660-033-0130 (16)(a)(D). Marion County imposes the following conditions on a utility facility sited in the EFU zone: "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." MCC 17.136.060(A)(1), incorporated by MCC.136.040(6)(c).

SWCD's delivery of irrigation water to surrounding lands and SWCD members' irrigated agriculture on the surrounding lands are accepted farm practices. Siting of the Facility on these 15 acres of EFU land and thereby removing them from agricultural production will impact SWCD water rights, and the operation of and the cost to operate SWCD Facilities. Without the additional conditions proposed below, the cumulative impacts of the Application will force a significant change in and significantly increase the cost of SWCD operations. That economic harm would be passed on to SWCD members who farm surrounding lands.



**2. Proposed conditions to prevent a significant change in or increase in cost to surrounding farm practices.**

**A. Landowner Quitclaim of Water Right.**

The 15 acres of the Property that may be converted from agriculture to the Facility ("Proposed Site") are currently being irrigated with a SWCD water right ("SWCD Water"). Construction of the Facility will preclude the beneficial use of SWCD Water on the Proposed Site. If the SWCD Water is not removed from the Proposed Site and transferred to other SWCD lands through a permanent transfer application with Oregon Water Resources Department ("Transfer Application"), after five years the water right may be forfeit for non-use. SWCD will likely not be able to replace the forfeited water. OWRD is not issuing new surface water rights from the North Santiam River and surface water rights in the Willamette Basin are expensive if not unobtainable.

OWRD approval of a Transfer Application requires landowner consent or a deed showing transfer of the appurtenant landowner's interest in the water right to SWCD. There is no simple process under law currently available to SWCD to force a landowner to deed SWCD its use rights even if it does not intend to use the water. If a landowner refuses or ignores a request to consent to transfer, SWCD would have to rely on costly litigation to protect its water right. Therefore, to protect the water rights necessary for farming practices to occur, and to prevent the substantial economic harm that would occur from water right forfeiture or litigation, SWCD requests that approval of the Application is conditioned on the landowner providing a deed quitclaiming interest in the SWCD Water appurtenant to the Proposed Site.

**B. Landowner Installation of a Pump or Measuring Device.**

Removal of the Proposed Site from agricultural use creates economic harm to farm uses by requiring SWCD to modify its facilities and equipment. In this case, the existing pump that provides SWCD Water to the Property will be oversized once the Proposed Site is removed from irrigation. Without modification, the pump would distribute more water than the Property may legally use. Under Oregon law, SWCD would be liable for overuse as the water right holder. Again, there is no special water law that protect SWCD from member overuse of its water rights. If the landowner does not install a new pump, then SWCD must pay for and install one. Therefore, SWCD requests that the County condition approval of the Application on landowner installation of a SWCD-approved method of measuring use of water on the remainder of the Property.



**C. Construction of Stormwater Detention Facilities.**

In its prior comments, SWCD detailed the water quality and quantity concerns related to construction and operation of the Facility including construction and ongoing stormwater discharges and Facility pollutants. These water quality and water quantity issues may significantly increase the cost of SWCD operations and the cost to the surrounding SWCD members' farm practices. As previously detailed, the permanent increase in impervious surface and construction of the Facility could increase sediment discharge and increase the annual volume and peak flows of stormwater from the Property. Besides the environmental concerns raised in prior comments, these impacts cause economic harm to SWCD and to its members.

Without a sufficient stormwater detention facility, pollutants from runoff, such as sediment, from Facility spills or leaks, or from fire control measures, will be discharged into SWCD Facilities. Pollutants cause economic harm in at least two ways. First, increased sediment will require SWCD to perform additional canal excavation activities. As detailed in prior comments, under the Mercury TMDL and SWCD's TMDL Plan, SWCD has mitigation requirements for excavation activities. Therefore, this will cause both increased maintenance and mitigation costs which are passed on to the SWCD members. Second, SWCD faces potential legal liability (and the associated costs) for water quality violations in its facilities, including any caused by the Facility.

To prevent significant increase in costs to farm practices, SWCD requests that the County condition the approval of the Application on the detention of all stormwater on-site through detention facilities sufficient for a 50-year storm event.

**D. Obtain an SWCD Consent Agreement.**

If Facility stormwater enters SWCD Facilities and increases peak flow, it can damage SWCD Facilities and damage surrounding property. Damage to the SWCD Facilities and surrounding farmland and structures will increase the cost of affected farm practices. Therefore, if stormwater is not contained onsite or if the Applicant proposes to use SWCD Facilities as an overflow for its stormwater detention facility, the Applicant must obtain a consent agreement from SWCD. A consent agreement would allow SWCD the opportunity to evaluate the pollutants in the proposed discharges and gauge the impact of increases in stormwater flows. SWCD may then enter into an agreement to address liabilities and costs surrounding water quality and increased stormwater flows. A SWCD consent agreement would also require that all Facility environmental planning documents, such as pollution prevention plans or spill plans, are submitted to SWCD for review and approval to ensure that pollution is kept out of the drainage ditch and SWCD Facilities.





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Portland, OR 97209-4128

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perkinscoie.com

November 20, 2025

VIA EMAIL

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D. +1.425.635.1450

**Re: Remington's Response to Santiam Water Control District Comments  
BESS Project (County File No. AR 25-015)**

Dear Ms. Foster:

On behalf of our client, Remington BESS, LLC ("Remington") we offer the following testimony and related exhibits in response to testimony offered by Santiam Water Control District ("District") requesting the imposition of specific conditions of approval. Our purpose with this testimony is three-fold: (1) summarize Marion County's ("County") conditioning authority under ORS 215.275(5); (2) explain why specific conditions proposed by the District should not be imposed under that statutory framework; and (3) propose a set of alternate and legally supportable conditions the County could adopt to address the District's concerns in compliance with ORS 215.275. Per our recent conversation with Mr. Speckman at County Planning, we understand that he will be forwarding this submittal including the attached exhibits to you as the Hearing's Officer for inclusion in the record of this review proceeding.

**1. Scope of Conditioning Authority under ORS 215.275(5)**

Specifically, the scope of the County's conditioning authority under ORS 215.275(5) authorizes the County to impose conditions under authorization of a utility facility on Exclusive Farm Use ("EFU") land when necessary to mitigate significant identified adverse impacts on surrounding agricultural practices.<sup>1</sup>

ORS 215.275(5) states:

The governing body of the county or its designee **shall impose clear and objective conditions** on an application for utility facility siting under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(c)(A) or 215.283 (Uses

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<sup>1</sup> *Rural Thurston Inc. v. Lane County*, 55 Or LUBA 382 (2007) (an applicant is not required to prevent *all* or *any* impact on farming practices, "ORS 215.296(1) only requires that the proposed use not force a *significant* change in accepted farm practices on surrounding lands devoted to farm use, or *significantly* increase the cost of accepted farm practices on surrounding lands devoted to farm use.") (emphasis in original).

permitted in exclusive farm use zones in nonmarginal lands counties)  
(1)(c)(A) to mitigate and minimize the impacts of the proposed facility, **if any, 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 farmlands.**<sup>2</sup>  
(Emphasis added).

The County's authority is not unlimited: conditions must have a clear nexus to impacts created by the proposed use and must be roughly proportional in scope and cost to those documented impacts.<sup>3</sup> In practice, that means the County may require measures that mitigate or avoid demonstrated significant adverse effects on surrounding farm practices or in the cost of such practices where those measures address impacts tied to the proposed development and fall within the County's land use and statutory jurisdiction. The County may not impose conditions that regulate matters outside its land use authority, duplicate existing state or federal regulatory schemes without justification, or require mitigation that bears no reasonable relationship to demonstrated significant impacts of the proposed use on surrounding agricultural practices.<sup>4</sup>

## 2. Several SWCD Requested Conditions Exceed the County's Regulatory Authority

Several of the District's requested conditions exceed the County's regulatory authority or fail the nexus/proportionality tests described above. First, conditions that would effectively modify or condition the parties' separate water-right entitlements, require third-party approvals beyond the County's control, or regulate statewide water-right administration are outside the County's land use permitting scope. The authorization of water-right transfers and measurement of water diversion are matters administered by the Water Resources Department; the County should not substitute its own regulatory regime for statutorily prescribed state water-right processes. Further, a transfer of water rights is not generally considered to force a significant change in farm practices or significantly increase farm costs.<sup>5</sup>

Second, some proposed measures duplicate or conflict with existing water quality, stormwater, and water-right safeguards already imposed by state permit programs. Where state or federal

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<sup>2</sup> See *Hood River Valley PRD v. Hood River County*, 67 Or LUBA 314 (2013) (surrounding lands are those lands in such proximity to the proposed use that the externalities or sensitivities of the proposed use could potentially cause significant changes in or significantly increase the cost of accepted farm practices on nearby lands).

<sup>3</sup> See *Nollan v. California Coastal Comm'n*, 483 US 825, 107 S Ct 3141 (1987) (holding that permit conditions must bear an "essential nexus" to a legitimate governmental interest addressed by the project's impacts); *Sherwood Baptist Church v. City of Sherwood*, 24 Or LUBA 502 (1993) (discussing the requirement that there be an "essential nexus" between the legitimate public purpose for which a development application could be denied, and the condition imposed); *Dolan v. City of Tigard*, 512 US 374, 386, 114 S Ct 2309, 2317 (1994) (requiring "rough proportionality" between the nature and extent of an exaction and the project's projected impacts).

<sup>4</sup> *Applebee v. Washington County*, 54 Or LUBA 364 (2007) (finding a county was not authorized to impose conditions that had nothing to do with the application pending before the county); *Hatley v. Umatilla County*, 68 Or LUBA 264 (2013) citing *LaGrande/Astoria v. PERB*, 281 Or 137, 148, 576 P2d 1204, *adhered to on reh'g* 284 Or 173, 586 P2d 765 (1978) ("Local government authority to regulate may be preempted expressly, or it may be preempted by virtue of the fact that it cannot operate concurrently with state law.").

<sup>5</sup> See *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015) (finding a transfer of water rights would not force a significant change in farm practices or significantly increase farm costs).

permits and standards directly regulate stormwater management, erosion control, and water quality, imposing separate or inconsistent county-level technical standards would be unnecessary and could be legally infirm unless the County demonstrates a site-specific need and proportional mitigation tied to the project's effects.

Third, certain requested water-measurement conditions are unnecessary in light of the landowner's commitment to authorize the District to transfer the subject water right for use on other portions of his land. See Exhibit A. Once the water right to irrigate the disturbed portion of the site is transferred, the potential for additional consumptive use at the project footprint will be eliminated; a separate county-imposed continuous metering condition therefore lacks the required nexus. Even if the County were to consider measurement requirements, the existing operational practice—estimating use from nozzle sizes or flow inhibitors and established flow rates—is an adequate, proportional method for tracking irrigation applications and will continue.

Finally, it is our understanding from documentation provided on the District's website attached as Exhibit B that the District delivers irrigation water to over 17,000 acres for agricultural and other non-agricultural uses via 106 miles of canals and ditches. See Exhibit B. Under these circumstances, the removal of 15 acres of irrigated land to accommodate the Project cannot be found to have a "significant impact" on the District's ability to continue to provide such services throughout the District, and the record contains no evidence to support such a finding. Further, required mitigation for significant impacts to agricultural practices under ORS 215.275(5) is confined to "surrounding lands" and does not extend to potential increases in irrigation assessment or wholly speculative stormwater damage costs on 17,000 acres as suggested by the District's testimony. To the contrary, the "surrounding lands" in this instance are largely confined to Mr. Jensen's adjacent acreage in agricultural production. See Exhibit A. For these reasons, Remington respectfully submits that the record is devoid of substantial evidence to support a finding that mitigation of significant project impacts on surrounding agricultural lands is required, as suggested by the District.

### **3. Proposed Conditions**

To address the District's concerns, while remaining within the County's conditioning authority, Remington proposes that the following conditions be included in and imposed via authorization of the Project:

1. Within 6 months from the date of building permit issuance for the Project, the landowner shall request that the District initiate a permanent transfer acceptable to the landowner of any water rights associated with the Project parcel to another parcel(s) for agricultural irrigation purposes. See Exhibit A. The landowner shall provide documentation required by the District to support both the transfer-off and transfer-on applications for a permanent transfer pursuant to ORS 540.510, ORS 540.520, and ORS 540.580 and in OAR 690-380 and otherwise as may be required by OWRD for a complete transfer application.

2. If requested by the District, the landowner shall also provide documentation it may request to support both the transfer-off and transfer-on applications and otherwise shall be

responsive to District requests for documentation related to the temporary water rights transfer process as outlined in ORS 540.520 and ORS 540.570 and in OAR 690-380, in order to avoid forfeiture of water rights in the event that the permanent transfer is not finalized within five years of the cessation of authorized water usage on the Project parcel.

3. Following or concurrent with the transfer(s) of water rights, the landowner shall agree to amend its SWCD water delivery contract(s) to confirm and implement this transfer of rights.

4. As to compliance with applicable water quality standards and stormwater detention requirements, the BESS Project shall be designed, constructed, and operated to comply with all applicable water quality standards and stormwater detention and management standards, including the water quality standards identified in Exhibit C (Water Quality Control Requirements Applicable to the Project). Prior to issuance of a building permit associated with construction of the proposed Project, the applicant shall submit civil engineering plans and a stormwater management plan prepared by a qualified engineer demonstrating compliance with those standards and showing the locations and specifications of on-site detention, infiltration, treatment measures, and erosion-control measures.

5. District consent shall be obtained prior to the discharge of off-site stormwater generated by the Project into District facilities.

Each of the foregoing conditions is (1) narrowly tailored to address the potential for significant site-specific Project impacts on surrounding agricultural practices, (2) tied to demonstrable mitigation of those impacts, and (3) intended to address the specific concerns expressed by the District. The County can implement and monitor compliance through the submittal of required plans and supporting documents for any subsequent required permits and typical administrative inspections. Where state permits are required to address stormwater management, water quality, or water-right transfers, the County should rely on coordination with the responsible state agencies and accept agency documentation of compliance as satisfying the County's condition.

In closing, the County's authority under ORS 215.275(5) allows imposition of site-specific and proportionate conditions that mitigate the alleged potential impacts associated with the Project on agricultural uses and water resources. The District's broad proposed conditions go beyond that authority in several respects; however, the County can adopt the five targeted conditions described above—initiation of a water-right transfer off the project footprint and associated contract modification; compliance with the water quality standards in Exhibit C and applicable stormwater detention standards; and, if needed, reliance on the landowner's existing nozzle/flow-based measurement practice—to address the District's concerns while satisfying the statutory nexus and proportionality requirements.

November 20, 2025  
Page 5

Thank you for your attention to this matter.

Sincerely,



Ryan C. Thomas

Sincerely,



Steven L. Pfeiffer

cc: John Speckman, Planner

November 20, 2025

Santiam Water Control District  
284 East Water Street #1763  
Stayton, OR 97383

**Re: Intent to Transfer Water Rights from Project Parcel for Agricultural Irrigation on Surrounding Acreage**

To Whom It May Concern:

I, Neils Paul Jensen, Trustee of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust and Trustee of the Irma Jensen Irrevocable Trust, owner of the parcel commonly referred to as the "Project Parcel" located on a 15-acre portion of the 5200 block of Pearson Rd SE, Turner (Tax Lot 092W20D000100, Pearson Rd SE, 500 ft east of Parrish Gap Road), hereby provide notice of my intention to permanently transfer water rights associated with the Project Parcel to other parcel(s) under my ownership or control for agricultural irrigation on approximately 300 acres surrounding the Project area. It is anticipated that the transferred water rights will be used to irrigate fescue grass seed, spearmint or similar irrigable crops.

Pursuant to ORS 540.510, ORS 540.520, ORS 540.580, and OAR 690-380, I intend to pursue a permanent transfer acceptable to me as landowner and to the District. In accordance with these statutes and rules, I will undertake the following:

- Within six months from the date of building permit issuance for the Project, I will request that the District initiate a permanent transfer acceptable to me of any water rights associated with the Project parcel to another parcel(s) for agricultural irrigation purposes. I will provide documentation required by the District to support both the transfer-off and transfer-on applications for a permanent transfer pursuant to ORS 540.510, ORS 540.520, and ORS 540.580 and in OAR 690-380, and otherwise as may be required by the Oregon Water Resources Department (OWRD) for a complete transfer application.
- If requested by the District, I will also provide documentation it may request to support both the transfer-off and transfer-on applications and otherwise will be responsive to District requests for documentation related to the temporary water rights transfer process as outlined in ORS 540.520 and ORS 540.570 and in OAR 690-380, in order to avoid forfeiture of water rights in the event that the permanent transfer is not finalized within five years of the cessation of authorized water usage on the Project Parcel.

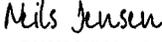
- Following or concurrent with the transfer(s) of water rights, I agree to amend my SWCD water delivery contract(s) to confirm and implement this transfer of rights.

Please direct all correspondence, requests for additional documentation, and coordination regarding the transfer applications to my attention at:

Neils Paul Jensen  
PO Box 299  
Jefferson, OR 97352

I appreciate the District's cooperation and look forward to working together to ensure a timely and compliant transfer of water rights for continued agricultural use.

Sincerely,

DocuSigned by:  
  
B6320FC9DC11458...

Neils Paul Jensen

Trustee of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust and Trustee of the Irma Jensen Irrevocable Trust

**\*\*\* ANNUAL BOARD MEETING - DECEMBER 15TH 10:00 AM \*\*\***

Dismiss

([https://www.fsa.usda.gov/sites/default/files/documents/fact\\_sheet-distressed\\_borrower\\_set\\_aside\\_program.pdf](https://www.fsa.usda.gov/sites/default/files/documents/fact_sheet-distressed_borrower_set_aside_program.pdf))

FSA Loan Borrowers may be eligible for Distressed Borrower Set- Aside Program (DBSA) With low commodity prices and widespread, devastating natural disasters, some farmers and ranchers may be financially distressed. If you are currently an FSA loan borrower with loans outstanding as of September 25, 2024, you may be eligible for a Distressed Borrower Set-Aside (DBSA). Current borrowers should reach out to their local FSA office for more information. The Distressed Borrower Set-Aside Program (DBSA) provides USDA direct loan borrowers the opportunity to set-aside one loan payment to the end of the loan term if they are unable to make their scheduled installment. DBSA results in the borrower accruing significantly reduced interest and allows them to become current on their loans and continue farming.

([https://www.fsa.usda.gov/sites/default/files/documents/fact\\_sheet-distressed\\_borrower\\_set\\_aside\\_program.pdf](https://www.fsa.usda.gov/sites/default/files/documents/fact_sheet-distressed_borrower_set_aside_program.pdf))



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## About

The Santiam Water Control District was formed in 1954 with the purchase of the Willamette Valley Water Company. The District presently delivers water to three hydroelectric plants, municipal water to the City of Stayton, irrigation water for over 17,000 acres and other various uses such as fish propagation, wildlife habit and wetland maintenance. The District irrigation distribution system consists of 106 miles of canals and ditches extending from Stayton to Salem.

The Santiam Water Control District was organized under Chapter 553 of the Oregon Revised Statute. An elected Board, consisting of seven members, is responsible for the administration of the District. The manager of the District is hired by the Board and conducts the daily functions of administration.

- **Irrigation Season May 1st – September 30th**
- **Extended Season March 1st – April 30th and October 1st -October 31st**
- **(Extended season water must be prearranged by calling the office)**

The law requires that in order to deliver water to our customers we must have a signed water delivery contract on file for each tax lot number with water rights. New land owners within the District should contact the office to set up a time to sign your water delivery contract. The contract will need to be signed by all owners in front of a notary and then recorded with Marion County. We have a notary in our office that can provide this service to District Patrons. A \$125.00 county recording fee is due at time of signing.

[SDAO Legislative Action Toolkit \(https://www.sdao.com/legislative-action-toolkit\)](https://www.sdao.com/legislative-action-toolkit)

[What is a Special District?](https://www.sdao.com/files/d5606f8ba/What+is+a+Special+District+Brochure+Final+Web+Update+063023)

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284 EAST WATER STREET, STAYTON OR 97383

TELEPHONE (503) 769-2669

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# RWE

## MEMORANDUM

**TO:** Ryan Thomas, Partner  
Perkins Coie LLP

**FROM:** Alexandra Thompson, Development manager for RWE Clean Energy, LLC,  
parent company of Remington BESS, LLC

**DATE:** November 18, 2025

**SUBJECT:** Remington BESS compliance with water quality control requirements

### Introduction

In a letter dated November 5, 2025, Santiam Water Control District (SWCD) made several statements in Section 2.A regarding the potential for the Remington BESS project ("the Project") to have significant adverse impacts on water quality unless the County includes conditions on the approval of the application.

This memorandum provides technical information regarding Remington BESS, LLC's compliance with all applicable water quality control requirements in federal, state, and local laws, policies, and regulations.

### Storm Water Pollution Prevention

During construction, the Project would be subject to compliance with the National Pollutant Discharge Elimination System (NPDES). NPDES was created in 1972 by the Clean Water Act. The EPA authorizes state governments to perform many permitting, administrative, and enforcement aspects of the program. In Oregon, the NPDES is administered by the Department of Environmental Quality (DEQ), which issues and administers the 1200-C Construction Stormwater General Permit to authorize construction-related discharges in Oregon. All construction activities that will disturb one or more acres of land and have the potential to discharge to surface waters of the state must obtain coverage under the Construction General Permit.<sup>1</sup>

DEQ's 1200-C Construction General Permit requires construction activities seeking permit coverage to develop and implement a Storm Water Pollution Prevention Plan (SWPPP). A SWPPP must be developed by a Qualified SWPPP Developer and must be tailored to a specific project and project site. The objectives of a SWPPP are: to identify pollutant sources (including soil erosion and

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<sup>1</sup> See current 1200-C Construction Stormwater General Permit at <https://www.oregon.gov/deq/FilterPermitsDocs/1200Cpermit.pdf>. DEQ is in the process of renewing the 1200-C permit for an new 5-year term.

# RWE

Page 2

sedimentation) that may be delivered off-site via stormwater runoff and affect the quality of stormwater discharge; to implement site controls and practices to reduce stormwater pollution; and to protect the quality of receiving waters. The SWPPP will include site-specific “best management practices” (BMPs) to minimize erosion on site and reduce or otherwise prevent conditions of erosion and stormwater runoff. Such BMPs would include, for example, silt fencing, straw bales and temporary catch basins, and inlet filters to control stormwater; and truck tire muck shakers, or similar devices, to prevent mud and debris from being carried onto roadways. These BMPs must be installed, inspected, and maintained to maintain permit coverage under the Construction General Permit.

During construction, a Qualified SWPPP Practitioner will direct the implementation of the BMPs outlined in the Project-specific SWPPP, and will inspect and direct any necessary repairs or adjustments to the BMPs to ensure their efficacy. Compliance with the NPDES Construction General Permit and associated SWPPP and BMPs would reduce the potential for increased erosion or siltation and runoff that could introduce contaminants and other pollution into surrounding waterways.

During operations, the Project will result in minimal new impervious surfaces in the form of concrete pads and foundations. These concrete pads will not cover the total 15-acre site, but will be sized to accommodate individual BESS containers and the Project substation, and will be non-contiguous, with graveled (pervious) access roads occupying much of the Project site. Because the Project will introduce minimal impervious surfaces and would be designed to follow natural drainage on site, the Project would not substantially alter the existing drainage patterns of the Project site.

The Project site is not within a 100-year flood zone or dam inundation zone, according to the FEMA Flood Insurance Rate Map, which would further reduce the potential impacts of flooding, or impeding or redirecting flood flows, at the Project site.

While the Project site is not located within Marion County’s Stormwater Management Area,<sup>2</sup> because it does not discharge into the County’s Municipal Separate Storm Sewer System (MS4), the Marion County Stormwater Standards are not applicable to the Project site. However, these standards do provide useful

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<sup>2</sup> See map of Marion County SWMA at <https://www.co.marion.or.us/PW/ES/waterquality/Documents/Stormwater%20Management%20Area%202019.pdf>

# RWE

Page 3

guidelines for post-construction stormwater management in the County.<sup>3</sup> These standards call for (emphasis added):

- The use of structural stormwater controls (i.e., permanent stormwater facilities that are designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater).
- A site-specific stormwater management approach that **targets natural surface or predevelopment hydrological function** through the installation of long-term operation and maintenance of structural stormwater controls; and
- Long-term operation and maintenance of structural stormwater controls at project sites owned by a private entity.

Further, the standards state that “The County’s Water Quality Design Storm (Design Storm) is 1.38 inches per 24-hour period. This design storm was selected to represent 80 percent of the County’s average annual runoff based on an evaluation of long-term rainfall data. Design flows and volumes for sizing stormwater management facilities shall be calculated based on the runoff from the Design Storm using an analytical method (see Section 4.1) acceptable to the Director.”

SWCD’s request to condition the Project’s approval with the requirement to detain all runoff from a 50-year design storm (i.e., a storm large enough that it only has a 2% chance of occurring in any given year) is somewhat unclear. If interpreted to mean that the Project should detain and infiltrate all stormwater on-site for a 50-year design storm (i.e., to build a detention pond that would capture all stormwater and allow it to evaporate and/or infiltrate to groundwater, with no off-site runoff), this would be both arbitrarily premature and without apparent basis in County or State guidance for stormwater pollution prevention.

The only mention of a 50-year design storm in the Marion County Stormwater Standards is in reference to the design of overflow pipes. The purpose of this is to control the outflow from a Project site’s detention facilities such that it does not exceed the existing conditions rate of flow from a 50-year storm. Under such a condition, Project design would size the stormwater detention facilities (e.g., bioswales, detention pond) to slow the rate of flow and hold water that exceeds the 50-year storm flows, but would ultimately allow off-site runoff at the same

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<sup>3</sup> See Marion County Stormwater Standards at <https://www.co.marion.or.us/PW/Engineering/engineeringstandards/Documents/MCPW%20Stormwater%20Quality%20Treatment%20Engineering%20Standards%20-%202022.pdf>.

# RWE

Page 4

rate as existing conditions. This aligns better with accepted stormwater control practices and would be acceptable to Remington BESS, LLC.

Under established engineering protocols, the site hydrology will be formally assessed, and stormwater management facilities designed, at the level of 30% civil engineering design. This level of design detail is not required or called for in an administrative land use application, nor has it yet been prepared. When this level of design is performed, the amount of additional post-development runoff created by the Project will be calculated and an appropriately sized stormwater control facility designed by a qualified engineer. As described above, the standard for design of structural stormwater controls is to avoid increasing the rate of runoff compared to existing conditions. It is anticipated that 30% design will include one or more bioswales and/or a small detention basin and, consistent with the SWCD's request, an outflow that is sized to match the existing rate of flow from the acreage within the Project site under a 50- to 100-year storm condition. These detailed site plans will be made available to the County upon application for ministerial grading and building permits and will be subject to departmental review and comment under applicable review criteria and standards. In the event on-site detention is required, a Water Pollution Control Facility (WPCF) permit will be required under applicable DEQ standards. Further, any off-site discharges to SWCD facilities will require SWCD consent.

## **Spill Prevention and Containment**

The Project will be subject to, and Remington BESS, LLC will meet or exceed, all applicable requirements for spill prevention and containment. This includes the requirements of the Clean Water Act and Oregon Fire Code as described below.

Originally published in 1973 under the authority of the Clean Water Act, the "Oil Pollution Prevention regulation" sets forth requirements for the prevention of, preparedness for, and response to oil discharges at specific non-transportation-related facilities.

The goal of this regulation is to prevent oil from reaching waters of the United States, and to contain discharges of oil. The regulation requires facilities storing a total aggregate capacity of aboveground oil storage containers greater than 1,320 gallons of oil to develop and implement Spill Prevention, Control, and Countermeasure (SPCC) Plans, and it establishes procedures, methods, and equipment requirements for the storage of oil. This regulation applies to the Remington BESS project during construction, when oil would be stored and used on-site to fuel construction equipment, and during operation, when oil would be stored and used at the Project substation and in on-site backup generators.

# RWE

Page 5

Remington BESS, LLC will prepare and implement a comprehensive Spill Prevention, Control, and Countermeasure (SPCC) plan, in accordance with all applicable federal, state, and local regulations. The plan will describe proper handling, storage, transport, and disposal techniques and methods to be used to avoid spills, minimize impacts in the event of a spill (e.g., using secondary containment, immediate reporting and cleanup of spills, and appropriate off-site disposal). Implementation of the measures in the SPCC plan will ensure that the potential for water contamination due to spills or upsets of oils will be minimized in accordance with all applicable laws and best practices.

Additionally, the 2025 Oregon Fire Code requires the preparation and implementation of a Hazardous Materials Management Plan (HMMP). The HMMP will include a Hazardous Materials Inventory Statement (HMIS); an Emergency Action Plan or Emergency Response Plan; and a plan for securing hazardous materials storage, dispensing, use, and handling areas against unauthorized entry.

In order to comply with all applicable requirements, Remington BESS, LLC's post-construction hazardous materials management and spill prevention and control plans will address all oils and hazardous materials stored and used on-site. It is important to note that the battery storage units are self-contained and would not be opened or maintained on site such that any materials internal to the battery packs or fire suppression systems would be exposed to potential spill conditions.





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November 26, 2025

**VIA EMAIL**

Jill Foster, Hearings Officer  
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5155 Silverton Road NE  
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[Jill@jff-law.com](mailto:Jill@jff-law.com)

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Ryan Thomas  
RThomas@perkinscoie.com  
D. +1.425.635.1450

**Re: County File No. AR 25-015: Appeal re Remington's BESS Project—Final Argument**

Dear Ms. Foster:

On behalf of our client, Remington BESS, LLC ("Remington") this memorandum represents Remington's final written argument in the above referenced proceedings. The proceedings involve an appeal of the Planning Director's ("Director") decision denying the proposed battery energy storage system project ("BESS Project") on 15 acres of land designated EFU (Exclusive Farm Use) adjacent to a PacifiCorp substation in Marion County ("County"). Please include this submittal in the record of the pending appeal proceedings.

**I. Executive Summary**

The available evidence and legal authority included in the record of this appeal proceeding demonstrate, beyond any plausible interpretation to the contrary, that: (1) the BESS Project is a "utility facility necessary for public service" pursuant to ORS 215.283(1)(c), and thus is permitted outright in the EFU zone subject only to ORS 215.275; (2) Remington properly considered reasonable alternatives outside of EFU land consistent with ORS 215.275 and; (3) that the Director impermissibly imposed additional substantive criteria as the basis for denial of the BESS Project—that BESS is prohibited in any zone in the County and that the farm impact test set forth in ORS 215.296 applies contrary to the express language and intent of ORS 215.283(1) and ORS 215.296 respectively.

The analysis and related evidence provided by Remington to demonstrate compliance with these controlling statutory provisions, beyond issues raised regarding compliance with ORS 215.275(5), remains unchallenged by the Director and any other third party during the appeal proceedings. The Director provides no substantive response to Remington's position and legal authority on appeal, and the only party to provide additional testimony, the Santiam Water Control District ("SWCD"), did not oppose or otherwise refute this analysis or evidence.

**II. Detailed Arguments**

The key questions for the Hearing's Officer to address are (1) whether a battery energy storage system ("BESS") is a utility facility necessary for public service, and (2) if the answer to that

question is “yes,” whether Remington demonstrated that it considered reasonable alternatives to the proposed siting of a BESS facility in the EFU zone based on consideration of one or more of the factors set forth in ORS 215.275. Based on the legal authority and substantive evidence available in the record, Remington respectfully submits that the answer to both questions is “yes.”

**A. The BESS Project is a Utility Facility**

As Remington explained in its pre-hearing brief and in subsequent oral and written testimony, the statutory term “utility facility necessary for public service” has been broadly interpreted by Oregon courts to include any equipment or apparatus that functions to perform or provide, in whole or in part, a service. *See Cox v. Polk County*, 174 Or App 332, 343–44, 25 P3d 970 (2001), *rev den*, 332 Or 558 (2001); *Keicher v. Clackamas County*, 175 Or App 633, 29 P3d 1155 (2001). Further, BESS are essential for utilities to store generated power and release that power back to the grid. They are a key component under established Oregon and utility policy for the provision of electrical service and thus constitute a utility facility.

Neither the Director, nor any third party, provided any evidence or legal authority to the contrary or allege that Remington’s analysis or interpretation of established case law addressing ORS 215.283(1) is incorrect, implausible or unsupported.

**B. Remington Considered Reasonable Alternatives Consistent with ORS 215.275**

The evidence presented in the record also establishes that Remington considered reasonable alternatives outside of EFU land consistent with ORS 215.275. ORS 215.275 requires that in order to determine whether a utility facility is “necessary,” an applicant must show that reasonable alternatives to siting the facility on EFU land were considered, but that, because of one or more of the six factors set out in paragraphs (2)(a) to (f), it is necessary to site the facility in an EFU zone in order to provide the needed service. Importantly, not all factors must be met; only one.

Remington’s application is based on three factors under ORS 215.275(2): technical and engineering feasibility, locational dependence, and lack of available urban and nonresource lands. Remington described its alternatives analysis based on these factors in detail in Appendix A to Remington’s pre-hearing brief. Remington provided substantial evidence of PacifiCorp’s stated utility need in the Willamette Valley area and how reasonable non-EFU alternatives to the current location were considered, but were deemed not feasible due to specific project siting constraints as detailed in Appendix A. The record of this proceeding includes no substantive evidence to the contrary or allegations regarding the adequacy of this evidence offered by Remington.

**C. The County's Ordinance Attempting to Ban BESS Does Not Apply to the BESS Project**

To the extent the Director's denial relies on County Ordinance 1480 (the "Ordinance"), which was enacted subsequent to the submission of Remington's application and bans BESS in all County zone designations, that Ordinance does not apply for two reasons: (1) the Ordinance is invalid on its face as to EFU zoned land, and (2) does not apply to the current application under goalpost standards set forth in ORS 215.247(3)(a).

First, the County's outright ban of BESS conflicts with the plain language of ORS 215.283(1). It is well established that when a County's EFU zoning code deviates from the statutory requirements in ways that conflict with the statute, the statute controls and the offending ordinance provisions are void. *See Hanson v. Yamhill County*, State Land Use Board of Appeals ("LUBA") No. 2024-065 (Final Opinion and Order) (Jan. 27, 2025); *Riggs v Douglas County*, 167 Or App 1, 9-10, 1 P3d 1042 (2000). The Ordinance constitutes an impermissible additional local criterion or restriction on a use allowed under ORS 215.283(1) that is not permissible and is therefore void as contrary to applicable statutory requirements. *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030, 1038 (1995).

Second, even if the County did have authority to ban BESS on EFU land, the ban would not apply to Remington's application. Under Oregon's goalpost standard (and the County's own interpretation as detailed in the record), the standards in effect at the time of application apply. *See* ORS 215.427(3)(a). Here, Remington applied on June 30, 2025, and the Director's decision to deny the Remington application was issued on August 1, 2025, which by definition establishes that application completeness was obtained within 180 days of submission.

Finally, the County's authority under ORS 215.275(5) allows imposition of site-specific and proportionate conditions that mitigate the alleged potential impacts associated with the BESS Project on agricultural uses and water resources. The SWCD's broad proposed conditions in its submittal dated November 13, 2025, go beyond that authority in several respects; however, we believe that the five targeted conditions set forth in Remington's submittal dated November 20, 2025, equally address SWCD's concerns and are acceptable to Remington.

In summary, no contrary legal authority or evidentiary support has been presented by the Director or any other third party that undermines the legal arguments, interpretation and evidence presented by Remington. The only hearing participant to present additional testimony or comment was SWCD, and their testimony was largely confined to the need for impact mitigation conditions based upon ORS 215.275(5). SWCD did not object to Remington's testimony regarding the classification of BESS as a utility facility, the adequacy of the alternatives analysis, or otherwise provide any evidence in support of the Director's denial. Further, there is no conflicting evidence in the record as to the legal authority relied upon by Remington or the factual analysis relied upon for the alternatives analysis. In sum, the record is largely devoid of evidence or contrary authority supporting the Director's denial of the BESS Project. Therefore, Remington respectfully requests the denial be reversed and Remington's application be approved.

November 26, 2025  
Page 4

Thank you for your consideration of this final testimony in support of approval of AR 25-015.

Sincerely,



Ryan C. Thomas

Sincerely,



Steven L. Pfeiffer

cc: John Speckman, Planner

**BEFORE THE MARION COUNTY BOARD OF COMMISSIONERS**

**In the Matter of an Appeal by the )  
Applicant, Remington BESS, LLC of a ) NOTICE OF APPEAL  
Decision by the Marion County Hearings )  
Officer, dated January 21, 2026, Denying )  
the Application for Administrative )  
Review, Case No. 25-015 )**

**1. Introduction and Reason for Appeal**

Remington BESS, LLC (“Appellant”) (on behalf of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust), the applicant in the above-referenced application, submits this Notice of Appeal of the January 21, 2026, decision by the Hearings Officer of Marion County, Oregon (“County”). The Hearings Officer denied Appellant’s appeal of the Planning Director’s earlier denial of Appellant’s application for Administrative Review for approval of the proposed construction and operation of a battery energy storage system (“BESS”) facility (“Proposed Development”) under Marion County Code of Ordinances (“MCC”) 17.136.040(I), Administrative Review No. 25-015.

**2. Procedural History**

Appellant applied on June 30, 2025, for Administrative Review. The County did not provide notice that the application was incomplete or otherwise indicate that the application was incomplete. The County rendered its decision denying the application on August 1, 2025. A copy of the County’s decision is provided as Exhibit 1 (the “County Decision”).

On August 14, 2025, Appellant filed a timely Notice of Appeal and Request for Hearing to the Hearings Officer pursuant to ORS 215.416 and MCC 17.115.110. A public hearing took place on November 6, 2025. The record was held open to allow parties time to provide supplemental comments until November 13, 2025, and November 20, 2025, respectively. The Hearings Officer denied the application for administrative review to construct the battery energy storage system as a utility facility necessary for public service under ORS 215.283(1), ORS 215.275, and MCC 17.136.040(I) on January 21, 2026. A copy of the Hearing Officer’s decision is provided as Exhibit 2 (the “Order”).

Under the 150-day rule in ORS 215.427, the County must issue a final decision within 150 days from the application date. In this proceeding, the parties agreed to a 90-day extension of said rule and therefore the County must issue its final decision by March 27, 2026.

### 3. Compliance with Appeal Requirements

Appellant is entitled to appeal the Order under MCC 17.122.120 as an aggrieved and affected party. The County's procedures to appeal and request a hearing of an administrative review decision by the Hearings Officer are set forth in MCC 17.115.110(G) which states: "MCC 17.122.070 through 17.122.130 shall apply to any appeals from the decision of the hearings officer." MCC 17.122.120 further states that:

An appeal may be taken to the board by any person, firm, or corporation... aggrieved or affected by the decision of the ... hearings officer on an application []. An appeal must be filed with the county clerk within 15 days from the date of mailing of notice of the decision of the planning commission or hearings officer... The appeal shall state wherein the planning commission or hearings officer failed to conform to the provisions of this title.

This appeal is timely filed on February 4, 2026. This Notice of Appeal identifies where and how the Order was factually or legally incorrect, and how the Order failed to conform to the applicable provisions of the Marion County Code and Oregon law. The reasons that the Hearing Officer erred in rendering the Order include, but are not limited to, the assignments of error identified below.

1. The Order was legally incorrect and inconsistent with applicable law, by misinterpreting and misapplying ORS 215.283(1)(c) and ORS 215.275, together with relevant case law including but not limited to *Cox v. Polk County*, 174 Or App 332, 342–44, 25 P3d 970 (2001), *rev den*, 332 Or 558 (2001).
2. The Order misapplied ORS 215.283(1)(c) and applicable law by concluding that the proposed BESS facility is not and cannot be a utility facility necessary for public service, and such conclusions are not supported by substantial evidence in the record.
3. The Order misapplied the law when it created new elements of the definition "utility facility" by requiring the owner of a "utility facility" to be a regulated utility providing electrical service directly to customers, while the standard articulated in case law is that the facility provide a service, which BESS provides. *Cox v. Polk County*, 174 Or App 332, 25 P3d 970 (2001).
4. The Order misapplied applicable law when it determined that ORS 215.283(1)(c) requires a showing that the utility facility is required to provide the service directly to consumers, and that but for the system, service to consumer would be interrupted, thereby creating a new legal standard not found in and inconsistent with the express terms of ORS 215.283(1) and *Brentmar v. Jackson County*, 900 P2d 1030, 321 Or App 481 (1995) including appellate rulings.
5. The Order misapplied the law by creating a new definition of "utility facility" that requires a showing that "but for" the proposed facility electric service could not be provided, which is inconsistent with the controlling provisions of ORS 215.275, *Cox v. Polk County*, 174 Or App 332, 25 P3d 970 (2001), and *Brentmar v Jackson County*, 900 P2<sup>nd</sup> 1030, 321 Or App 481 (1995).

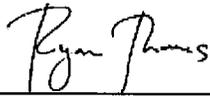
6. The Order was legally incorrect and inconsistent with applicable law by misinterpreting and misapplying the alternative siting factors in ORS 215.275(2) and OAR 660-033-0130(16) (which are also in MCC 17.136.040(I)), to elevate each factor as mandatory review criteria. Appellant applied under factors (a), (b), and (c) under ORS 215.275, yet the Order analyzed the Proposed Development under all six factors, including (d), (e), and (f). The Order conflates the public health and safety factor, analyzing the factor as if it required an affirmative showing from Appellant rather than an optional factor (which Appellant is not applying under); the Order also unlawfully analyzes the health and safety factor within the locational dependence factor.
7. The Hearing Officer erred and misapplied ORS 215.275 and applicable case law interpreting the same by failing to consider the applicant's analysis and actual basis for its business needs that advance the objective of providing the utility service, inconsistent with *Sprint PCS v. Washington County*, 186 Or App 470, 481, 63 P3d 1261 (2003). Contrary to *Sprint*, the Order does not consider the applicant's "decision about its service needs," which should be respected under *Sprint*, and that "a site that does not meet those needs is not a reasonable alternative" when those decisions advance the goal of providing service. *Id.*
8. The Order was legally incorrect and inconsistent with applicable law, including ORS Ch. 215, Statewide Planning Goal 3, and interpreting case law, including but not limited to *Brentmar v. Jackson Cnty.*, 900 P2d 1030, 321 Or 481 (1995) by applying and relying upon and applying local review criteria (including the definition of utility facility in MCC 17.110.584) to an EFU use allowed under ORS 215.283(1)(c).
9. The Order was factually incorrect and not supported by substantial evidence, including by stating that "Applicant did not provide any evidence to support the assertion that they examined other locations in the county for compatibility with the project," when in fact Appellant provided a detailed, 15-page alternatives analysis.
10. The Order incorrectly concludes that the Applicant failed to demonstrate that the BESS satisfies one or more of the factors in ORS 215.275(2) and MCC 17.136.040(I) notwithstanding substantial evidence to the contrary in the record.
11. The Order unlawfully relies upon MCC 17.110.584 and related County implementing land use regulations rather than controlling state statute and implementing Land Conservation and Development Commission ("LCDC") regulation to support the conclusion that the proposed BESS is not a utility facility subject to ORS 215.283(1)(c).
12. The Order improperly applies MCC 17.136.060(A)(1) and ORS 215.296 (the farm impacts test) by concluding that a use allowed under ORS 215.183(1)(c) is subject to either review criteria notwithstanding the express provisions of ORS 215.296(1) and *Brentmar*. While the farm impacts test does not apply, Appellant provided evidence from the owner of the land to demonstrate that the Proposed Development would not cause a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.

The Hearing Officer rendered its decision on January 21, 2026. Ex. 2. The Hearing Officer's Order states that an appeal must be filed by February 5, 2026. *Id.* at 21. This Notice of Appeal, dated February 4, 2026, is therefore timely and complies with MCC 17.115.110 and MCC 17.122.120.

For purposes of providing additional clarity and notice to the Board of Commissioners regarding the legal and factual errors within the Planning Director's initial Administration Decision and incorporated by the Hearings Officer in affirmance of the earlier decision, the Appellant's legal memorandum dated October 31, 2025, and submitted to the Hearing Officer, is incorporated herein as additional reasons for this appeal and provided as Exhibit 3.

#### 4. Prayer for Relief

For the reasons stated herein, Appellant provides this Notice of Appeal to the Board of County Commissioners and requests that the Board reverse the Order, find that the Proposed Development is a utility facility necessary for public service under ORS 215.283(1) and ORS 215.275, and approve Appellant's application for Administrative Review, No. 25-015.



Dated: 2/4/2026

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Ryan Thomas  
Steven L. Pfeiffer  
Perkins Coie LLP  
1120 NW Couch St., 10<sup>th</sup> Floor  
Portland, OR 97209-4128  
Phone: (503)-727-2261

*Appellant's Representatives*

**EXHIBITS**

- Exhibit 1: Planning Division Decision on Administrative Review No. 2025-015
- Exhibit 2: Hearing Officer Order on Case No. 2025-015, Administrative Review
- Exhibit 3: Remington BESS, LLC's Pre-Hearing Brief, dated October 31, 2025



PREVIOUS AMENDMENTS  
By Senate, April 4, 1963  
By House, May 24, 1963

SECOND HOUSE AMENDMENT TO SENATE BILL 129

By UNANIMOUS CONSENT

May 28, 1963

On page 2 of the printed House Amendments dated May 24, 1963,  
after line 8 insert a new <sup>subsection</sup> subparagraph:

"(5) Utility facilities necessary for public service."





# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Land Conservation and Development

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May 22, 2000

TO: Land Conservation & Development Commission

FROM: Carol St. Louis *Carol*

SUBJECT: Agenda Item 3, June 8-9, 2000, LCDC Meeting

### MINUTES

Attached for your review and approval are the minutes of the commission's March 9-10, 2000 meeting.



**THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE LCDC**

**LAND CONSERVATION AND DEVELOPMENT COMMISSION**

**March 9-10, 2000**

**Salem**

Where individual members were absent for a portion of the meeting, that absence is noted under the particular agenda item.

**Attending**

Commissioner Lindsay Berryman

Commissioner Gary Harris

Commissioner Randy Franke

Commissioner Gussie McRobert

Commissioner Steven Pfeiffer

Commissioner John Van Landingham

Commissioner Charles Vars

All commissioners attending. 3/9-10/00

**1. Public Comment**

No one appeared.

**2. Minutes**

It was MOVED by Commissioner Vars, seconded by Commissioner McRobert and passed unanimously to approve the minutes of the commission's December 16-17, 1999 and January 27-28, 2000 meetings.

**3. Issues Pending**

Director Benner reviewed the tentative agenda for the commission's April meeting.

**4. Request to Appeal Pursuant to HB 2484 (1999 Legislative Session) and OAR 660-010-220**

House Bill 2484 requires LCDC approval of a director's decision to seek review of a local government land use decision an expedited land division or a limited land use decision. No such approval was needed at this time.

**5. Public hearing and Possible Adoption of Proposed amendments to rules related to Goal 3 (Agricultural Land) and Goal 4 (Forest Lands) (OAR Chapter 660, divisions 006 and 033) in Response to 1999 Legislation**

Ron Eber of the department staff presented the staff report.

### **Summary of Amendments to Goal 3 Rule**

**OAR 660-033-0020(1)** – Updates name of the Soil Conservation Service (SCS) to the Natural Resource Conservation Service (NRCS). [p.1, lines 23-24]

**OAR 660-033-0020(12)** – Amends definition of the Willamette Valley to correctly indicate that certain lands in Benton County lying east of the summit of the Coast Range are not subject to certain land use provisions only applicable in the Willamette Valley. [p. 4, lines 26-28]

**OAR 660-033-0030(6)** – Replace name of SCS to NRCS as in OAR 660-033-0020. [p. 5, lines 24-25]

**OAR 660-033-0100(10)** – Clarifies that the creation of new parcels for the nonfarm uses may only be allowed according to the provisions of ORS 215.263. This will incorporate the 1999 Legislative amendments to this provision authorizing certain partitions public parks and open space and churches [Chapters 321 (SB 838) and 349 (HB 2389), Oregon Laws 1999]. [p. 7, lines 34-35]

**OAR 660-33-130(3)(d)** - Corrects existing rule provision that referenced wrong rule paragraph. [p. 10, line 27]

**OAR 660-33-130(4)(b)** – Removes unneeded reference to rule subsection. [p. 12, line 24]

**OAR 660-33-130(4)(c)(C)** – Clarifies that the rule provisions on the “materially altered” standard in OAR 660-33-130(4)(a)(D) applies to the **both** the review of nonfarm dwellings on existing parcels and when reviewed in conjunction with the creation of a new parcel. [p. 13, lines 28-29]

**OAR 660-33-130(10)** - Incorporates amendments to allow a “recreational vehicle” to be used a temporary hardship dwelling from HB 3278 [Chapter 640, Oregon Laws 1999]. [p. 15, lines 8 and 16]

**OAR 660-33-130(16)** - Adds new standards regarding the review of “utility facilities” from HB 2865 [Chapter 816, Oregon Laws 1999]. This bill also requires the Commission to adopt additional rules to guide a local determination of how land costs may be considered when evaluating alternative sites for the siting of utility facilities that are not substantially similar. Land costs may not be considered when evaluating alternative locations for facilities that are substantially

similar [See proposed rule –130(16)(c)]. [p. 16, all and p. 17, lines 1-10]

**OAR 660-33-130(18)** – Adds new provisions regarding the use of “yurts” for overnight camping in private campgrounds from SB 882 [Chapter 758, Oregon Laws 1999]. [p. 17, lines 27-28 and 35-43 and p. 18, lines 1-7]

**OAR 660-33-130(21)** – Allows “living history museums” on all lands zoned EFU under ORS 215.283 and not just in Marginal Land Counties under ORS 215.213 from SB 580 [Chapter 320, Oregon Laws 1999]. [p. 19, lines 8-12]

**OAR 660-33-130(32)** – Adds new standards regarding the review of “utility facility service lines and accessory facilities or structures” from HB 2865 [Chapter 816, Oregon Laws 1999]. These are not subject to the standards applicable to other “utility facilities” under proposed rule – 130(16). [p. 21, lines 34-40]

**OAR 660-33-130(33) & (34)** – Clarifies the type of “outdoor gatherings” that are not a “land use decision” as defined by ORS 197.015(10) and not subject to review under these rules from those that are subject to review by a county planning commission under ORS 433.763 from SB 99 [Chapter 866, Oregon Laws 1999]. [p. 22, lines 1-10]

**OAR 660-33-120 - Table 1:** Adds certain uses allowed in farm use zones which were authorized by SB 580 (recreational vehicles), SB 795 (animal shelters), HB 2865 (utility, fire service and irrigation district operational facilities), HB 3571 (limits community centers to those for local rural community) and SB 99 (outdoor gatherings). Table 1 is attached at end of proposed rules]

#### **Summary of Amendments to Goal 4 Rule**

**OAR 660-006-0005(2) & (3)**– Updates name of the Soil Conservation Service (SCS) to the Natural Resource Conservation Service (NRCS). [p.2, lines 24-25 and 30-31]

**OAR 660-006-0025(3)(q)** - Clarifies the type of “outdoor gatherings” that are not a “land use decision” as defined by ORS 197.015(10) and not subject to review under these rules from those that are subject to review by a county planning commission under ORS 433.763 from SB 99 [Chapter 866, Oregon Laws 1999]. [p. 6, lines 12-15]

**OAR 660-006-0025(4)(t)** - Incorporates amendments to allow a "recreational vehicle" to be used a temporary hardship dwelling from HB 3278 [Chapter 640, Oregon Laws 1999]. [p. 7, lines 32 and 39]

**OAR 660-006-0025(4)(y)** - Clarifies the type of "outdoor gatherings" that are subject to review by a county planning commission under ORS 433.763 from SB 99 [Chapter 866, Oregon Laws 1999]. [p. 8, lines 22-26]

In addition to the above items contained in the staff report, Mr. Eber presented the following proposed amendments to the sewer system definition.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, 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. [Page 17, lines 24 to 26]

Commissioner Pfeiffer asked about the mass gathering rule. He wanted to clarify the Legislature made this determination and LCDC would just be carrying it forward. Mr. Eber replied that was correct, the rule wording was straight out of the statute. Commissioner Pfeiffer said he asked for the clarification because the section was confusing, but as the wording was right from the legislature, the commission probably did not have the opportunity to fix it. Commissioner Pfeiffer asked if the commission could define "similar facility." Richard Whitman, Assistant Attorney General, replied that there was some legislative history that would allow clarification of "similar." Commissioner Pfeiffer suggested that in the next round of amending these rules staff delve into legislative history and come up with a definition of "similar."

Commissioner McRobert asked what was considered a utility facility. Mr. Eber replied that it was up to the local government to decide. The provision has been in statute since 1963 and is intended to cover a wide range of utility things, such as cellular towers, sewer lines, booster stations.

Commissioner Harris asked about high-value farmland maps. What happens under SB 543 if counties are not in periodic review. Director Benner said that if developing maps was a work task in a periodic review work program of a county that was in periodic review at the effective date of SB 543, it would no longer have to do the work task. Commissioner Harris said the requirement for mapping should be put back in for all counties. Commissioner McRobert understood more counties were continuing with periodic review. Jim Knight, Manager of the Department's Rural and Community Services Division, confirmed that was correct.

No one appeared for public comment.

It was MOVED by Commissioner McRobert, seconded by Commissioner Vars and passed unanimously to adopt the staff recommendation .

**6. Public Hearing and Possible Adoption of amendments to Goal 4 (Forest Lands) Rules in Response to House Bill 2540 (1999 Oregon Laws Chapter 586)**

Jon Jinings of the department staff presented the staff report.

The 1999 Legislative Assembly passed House Bill 2540 (1999 Oregon Laws Chapter 586) identifying youth camps as a use that may be permitted in Forest and mixed Agricultural/Forest Zones. In addition, House Bill 2540 also directs the commission to adopt administrative rules establishing criteria for the approval of a youth camp within one year of its effective date (July 12, 1999).

The commission was provided a briefing on this subject at its January 27, 2000 meeting.

New text has been added to OAR 660-006-0025(5) to identify youth camps as a use that may be offered in a forested area (draft rule pg. 4, line 36). The body of language describing standards and criteria applicable to a youth camp proposal has been included as OAR 660-006-0031 (pg. 9, line 15 through pg.11, line 34). New text is **bolded and underlined**. Explanatory language pertaining to the individual sections of the draft rule is included in the accompanying table.

Revisions are also proposed to OAR 660-006-0027(2) and (3). These revisions are not related to the subject of youth camps and were discussed by Ron Eber during his presentation on other proposed revisions to the administrative rules for Goals 3 and 4 (Agenda Item 5).

Commissioner Pfeiffer asked if a local government could deny a youth camp based on a Goal 5 analysis. Director Benner did not believe the legislature intended to authorize youth camps and supercede other land use goals. There would need to be a need a plan amendments process. Mr. Whitman said the commission clearly has the authority to decide how this would apply to the counties. Mr. Jinings believed this responsibility would be intact regardless of this rulemaking activity.

Mr. Jinings said the department recommended postponement of adoption until the commission's April meeting

Commissioner McRobert asked if the definition of youth camps in the amended rule was different from youth camps in operation now. Mr. Jinings replied that a number of the camps operating today fall under definition of organizational camp rather than youth camp. Organizational camps offer a broader range of participants than do youth camps as defined in the statute.

Commissioner McRobert noted that local jurisdictions have to comply with fire code, therefore why should those provisions be in the rule. Mr. Jinings said everyone at the

table in the group that worked on the rule said it was beneficial to include the fire standards. They have been in the forest rules for some years, and the department had even received recommendations to strengthen those provisions.

Commissioner Van Landingham said in light of the department's recommendation not to act at this meeting, was there enough time to meet the July 12 statutory deadline. Mr. Jinings replied that there was

Commissioner Berryman said the rule was worthwhile, but she wondered if it was written so narrowly as to be difficult to comply with. She asked if the aim was to avoid people meeting the rule. Mr. Jinings replied that that certainly was not the intent. He said efforts had been to come up with an opportunity for people to pursue youth camp approvals. The department is trying to make a fair process and balance the interests of all parties.

Commissioner Vars asked if the delay would cause any problems for anyone. Mr. Jinings said he had not heard of any, but testifiers may say otherwise.

Commissioner Pfeiffer asked if commissioners had any concerns about continuing this matter until the April meeting. Because of the statutory deadline, adoption cannot go beyond April meeting. Hearing no objection from other commissioners, Commissioner Pfeiffer announced there will be a public hearing at the April meeting with probably the advisory committee meeting and revisions to the rule in-between. Mr. Jinings said it would if the commission asked staff to work on specific issues.

Commissioner McRobert asked where do we step over the line in protecting existing forest land where these camps would be located. What is wrong with having an outing in the winter? Limiting length of season makes her nervous. Mr. Jinings agreed. He said there was some discussion about limiting duration of use of a camp, but nothing in the rule requires a fixed timeframe for operation. One of the things a local government may do if it finds a wildlife conflict is limit times of operations.

Commissioner Berryman said youth camps have a time that they can be used because children are in school etc. Using the facility for other things could bring in money to benefit children. Why not allow adults to use it when children cannot. She was concerned the rule is written so narrowly that that would not be allowed. Mr. Jinings said camps looking for a use that can be considered a conditional use in a forest zone can use the exceptions process.

## PUBLIC HEARING

*Representative Jeff Kropf* thanked the commission for the opportunity. Regrettably he came to oppose rule as it is written. He appreciated the extension of time to clear up some misunderstandings. He appreciated working with staff and noted they have been responsive to his concerns. He noted this was a very difficult process and

controversial issue and that everyone will be happy. Representative Kropf especially appreciated Mr. Jinings patience.

Regarding the definition of youth camp, Representative Kropf said there was unclear language in statute as to what is a public benefit corporation and how religious corporations fit into that. *Chris Crane*, Legislative Counsel, testified on the question of who can establish a youth camp. The rule says a youth camp may be operated by a unit of state or local government or a public benefit corporation. By statute public benefit corporation is not a religious corporation. Why was the distinction made that public benefit corps could establish a youth camp but religious corporations could not. Using the term non-profit corporation instead of public benefit corporations could take care of this. Commissioner Pfeiffer asked which definition captures the most. Mr. Crane replied that non-profit would. Commissioner Van Landingham said that non-profit includes mutual benefit corporations. He suggested the rule may just want to include religious corporations. Commissioner Harris asked about tax exempt status. Mr. Crane said that tax status goes to land ownership acquisition.

As a volunteer fire captain for his local fire department, Representative Kropf said he understood that fire suppression is an important consideration for this type of facility. However the word "significantly" is a very subjective term. It may provide an opening for litigation. Commissioner Pfeiffer agreed, and said he had a similar concern with visual or audible aspects. He asked if there was an objective test for adequate fire suppression which if met is all that can be done. Representative Kropf suggested inquiring of the Fire Marshal's what appropriate fire suppression would be in this instance. Typically camps are located away from a rural fire district and will take some time for firefighters to get there. Requiring some type of fire suppression activity is very appropriate. Commissioner McRobert said that since counties have to comply with state fire code, was it necessary to also include it in the rule. Representative Kropf said he would be satisfied if the camps fire suppression met county requirements which met state rules. Mr. Jinings said HB 2540 asked the department to promulgate rules similar to the wording of the bill, which contains the "significant" language. Commissioner Van Landingham said he liked the word "significant" because it means more than just any fire suppression.

Regarding the numbers of overnight campers, Representative Kropf said the intent of legislation was not to create resorts. That is not what a youth camp is. He said that the problem was that sometimes large gatherings may be a function of a youth camp such as parents day. He was not sure it was necessary to address the number of campers. This also creates a problem for camps established for special needs children. They may need more adults to children. Representative Kropf questioned whether this provision would meet the Americans with Disabilities Act, and he did not want litigation on this point.

Representative Kropf said he was very uncomfortable with the level of micro-management in this rule. Specific requirements should be left up to local planning

commissions. He asked if language could be written so local planning departments should consider things like size of buildings, buffer zones, etc. Those issues of concern are valid but he thought they could be addressed at local level.

Representative Kropf said the department's opposition in the legislature to the bill was concerned with the possibility of intensive resort-like uses. He asked the commission to consider how language should be changed to not allow resorts but allow youth camps on a case-by-case basis leaving the decision up to local governments.

Regarding the ESA analysis, Representative Kropf was concerned that if a group did not like a camp proposal they could use this portion of the rule to object, and be persuasive. He said wildlife rarely conflict with camp uses, and in fact, camps add greatly to wildlife as sanctuary.

Commissioner Pfeiffer asked if it was the intent of the legislation to offer local government the opportunity to reject a youth camp for reasons other than those applied by LCDC. Representative Kropf said the legislation did intend a certain discretion, but not to the point that the rulemaking process would create a situation where the discretion would not allow any youth camps be built. He believed local governing bodies need to have the ability to look at criteria LCDC establishes in rule.

Representative Kropf said he did not want to revisit this issue with further legislation because of LCDC rules. He was confident the department was willing to work on areas of disagreement, and recognizes everyone may not always agree.

Regarding the staff to children ratio, Commissioner Harris said he interpreted the 50% rules to mean 50% kids 50% adults with 10% as an add on. Representative Kropf said if that were spelled out it would alleviate some concerns.

Commissioner Vars noted Representative Kropf had made reference to family camps. He asked if the Representative was still expecting rules to be written for youth camps. Representative Kropf replied that it was his intention that the rules be focused in the direction of opportunities for youth.

Representative Kropf noted that the work group had gone as far as it could. It did not come to consensus and probably would not. He did not think another meeting of the work group would be helpful. He wanted the rules to apply to broad groups which have an interest in youth. He said it was important that rules be adopted which allow for flexibility for the state as a whole.

Commissioner McRobert asked if Legislative Counsel agreed that LCDC had the ability to exempt a use from the endangered species act. Representative Kropf said he had not talked with Legislative Council about this point, but did not think the commission had that ability. Mr. Crane verified that it was not possible for the commission to exempt a use from the ESA.

Commissioner Harris asked if Representative Kropf was happy with the limit to a single caretaker residence. Representative Kropf said the organization that first brought this issue to him wanted to be able to build one facility but separate it because of the layout of their land. In that circumstance he could see why they would want at least two caretaker dwellings for two separate areas of the camp. However, he said that generally, he was happy with single caretaker residence.

Commissioner Van Landingham said the commission was sensitive about the issue of the work group. He asked if it was not a good idea for the staff to meet with the work group again. Representative Kropf said at this point the work group had gone as far as it could, and the commission should not work with its staff on the rules. He said staff was capable of coming up with language which would be agreeable to most in the work group..

*Al Couper*, Oregon Trail Council of Boy Scouts of America, presented a letter from the Council president. He said they were generally happy with the rules and supportive of general versus specific criteria. They favored a firm general direction from the commission.

*Richard Fisher*, Bethel Baptist Church, testified on the importance of youth camps.

*Dave Bertz*, Camp Tadmore, echoed Representative Kropf's comments. He agreed the advisory group has gone as far as it can. Landowners around his camp are very supportive. The definition of youth camp is broader than developed in the rules. It can be a lot of adult activities that benefit youth. Work needed to be done on the adult numbers and greater discretion needed to be given to local government.

Commissioner Pfeiffer asked if Camp Tadmore complied generally with the types of standards in the proposed rules. Mr. Bertz said they would not be able to establish their facility today under these rules. They would have trouble with maximum numbers. They also lease to other groups when kids are not available. They also have a small retreat facility within their grounds. Commissioner Pfeiffer asked if Camp Tadmore depended on the income from the non-youth activities. Mr. Bertz said they do, and if they did not have those non-youth activities they would have to reevaluate their youth programs because they would not have the income. Mr. Bertz was concerned if an established camp tried to do something new that county planners would look to these rules as a guideline. Camp Tadmore has a conditional use permit, so they can do whatever they want for the next 10 years or so within this existing permit. Director Benner noted the commission could address how it wants rules to apply to existing camps.

Commissioner Vars asked what was the unsatisfied demand for youth camps in Oregon. Mr. Bertz said they run a 10-week summer camp and operated at 97% capacity. They have very few times available for other activities. Mr. Bertz said they frequently turn away people who want the opportunity to come to their camp, and

other camps are in the same position. Commissioner Vars asked if there was a professional organization the commission could consult with about what the demand for youth camps was. Mr. Bertz suggested Christian Camps International may have some statistics.

*Mark Copeland*, testified he was one of the adjacent landowners to the original camp proposal in Crook County. He submitted a letter for the record. Mr. Copeland said he strongly supports camping in forest zones, but the camp has to be located on a tract large enough to absorb the impact. It is important to consider both the impact of the adjoining users on the camp and the camp on the adjoining user. Mr. Copeland said he was currently working on a proposal for a 1000 acre camp in Alaska because 250 acres in Oregon just doesn't make it. Mr. Copeland said the camp in Alaska maintains its own mobile fire equipment, and he thought that was an important requirement.

In response to a question from Commissioner Harris, Mr. Copeland said he owned and ranched over 6000 acres in Crook county, adjacent and to the south of the proposed camp. Commissioner Harris asked if Mr. Copeland would want this left to the local government without a statewide standard. Mr. Copeland said enough space was needed in Eastern Oregon to have an effective buffer. Rules would spare the camp and the neighbors the cost of going through a fight. Mr. Copeland said he works with the Boy Scouts and was very supportive of youth camps. However, the difficulty that needed to be understood was just how big an impact these camps are on their surroundings.

Commissioner Pfeiffer asked how many camps in Oregon involved 50-150 acres. Mr. Copeland guess there were about 20-25. Commissioner Pfeiffer commented that the trend is to bigger camps and more facilities. These are not like camps of his youth.

*Dan Van Vactor*, representing Rebecca Julian, submitted written comment for the record. Regarding the suggestion that the work group not get back together, Mr. Van Vactor said the indication was that the political process be allowed to deal with this as opposed to the large effort of citizens. If you owned a farm or forest site and you had a proposal for an urban use with 350 users, impacts on adjacent landowners should be considered. Youth camps are a good thing, but Mr. Van Vactor did not in support trying to ignore Goal 5, and ignore that forest land users need fire protection. He had a hard time with the suggestion that staff should only be working directly with the commission. Mr. Van Vactor would welcome a work session with the commission for a full discussion. It may be valuable for a commissioner sit in on a session of the work group. Mr. Van Vactor acknowledged the commission was running short of time and apologized for what appears to be an end run around the good effort done thus far. He said Jon Jinings did a good job of walking down the middle/

*Larry Syme*, Outreach Northwest, presented written comment for the record. The work group was marred with his bias as well as his neighbors. If other landowners

were on the committee it may be better. Mr. Syme said he had no problem with fire suppression standards and welcomed them. He contacted his legislator because there was no designation in forest zones for camps, either youth or organizational. Camps have existed successfully with wildlife, neighbors and resource lands for a long time. Mr. Syme said he will be submitting a revised site plan that will hide the camp from view unless on the property.

Commissioner Harris asked if it was possible to run a camp on youth stays alone or would they need to rely on income from other than youth activities to keep the camp solvent. Mr. Syme believed they could run on youth stays alone, but that some adult use was warranted, such as retreat situations two to three weekends a year, or a special event.

Commissioner McRobert asked what the difference was with the Oregon Health Code and the proposed rules. Mr. Syme said he understood counties had been using the Oregon Health Code when siting camps in forest zones until they ran up against some neighbors that did not want them there. The county followed the definition of organizational camps and thought that was where youth camps fell. In response to Commissioner McRobert, Mr. Syme said both youth and organizational camps would still have to follow the Oregon Health Code.

*Keith Betz*, Boy Scouts of America, was concerned about numbers of children and adults. They do scoutmaster training. All attendees are scouts, both adults and children.. Small children need one parent per scout. He said the acreage limit was okay, but 350 campers overnight for each seems limiting. He said scouts do a lot of things together and then divide into smaller groups for other activities. They need separate areas to keep kids out of the rain. He recognized it was hard to set one standard for everybody.

*Kevin Birch*, Department of Forestry (DOF), provided written comment for the record. The proposed rule addresses what is appropriate in a camping situation in a forest zone. He thought the rules were done well in the way it is crafted. He Concerned about affects on commercial forest operations; heavy industry is not conducive to neighbors. Mr. Birch supported having the counties make findings . He would appreciate extra standards for fire protection and viewed the standards in the rules as minimum. Many forest zones do not have rural fire protection. All DOF can do is keep fire from spreading and watch the facility burn down. Mr. Birch said he would be happy to assist staff on some different standards. Commissioner Pfeiffer asked if these fire protection standards were not in the rule, what would a local government be required to impose. Mr. Birch said normal Goal 4 standards would still apply, so you would have to meet those standards. Building standards vary by county.

*Greg Kaminski*, Camps Northwest, testified his group has used rented facilities so far, but have been approved for a youth camp in Oregon. It was a difficult task and took

three years to go through the conditional use process. They tried to develop at an old school, but neighbors said camps belong in the woods. They have found young people are looking for better situations which involve the whole family. Families do not want to go to a rustic camp. Mr. Kaminski said limits on caretaker residences would make it difficult to house staff. He was very concerned with the proposed rules, and submitted a drawing of their proposed camp for the record.

Commissioner McRobert asked if Mr. Kaminski's camps were more like resorts. Mr. Kaminski replied that they were an in-between category. They want to provide facilities for the whole family, couples retreats, men's retreats, etc. Commissioner Berryman asked if he was talking about a family recreation center. Mr. Kaminski replied no, it is a youth camp.

*Ben Atchley*, testified he helped to build Camp Tadmire and his children have had the opportunity to attend outdoor school there. Children now travel out of state because there is no room for their church camp in Oregon. He donates time to work with young people and finds it odd that would make it impossible to house camps in Oregon's forest zones. He thought the commissioners should visit Camp Tadmire before next hearing. Mr. Atchley said he wants places where local kids can go.

*Joyce Donaca* and *Jodi Roan*, of Prineville, testified about the impacts the proposed youth camp in their area would have on the surrounding property owners.

#### END OF PUBLIC HEARING

Mr. Jinings asked the commission for assistance and guidance on how to proceed i.e., reconvening working group and anything else to work on before next meeting.

Commissioner Van Landingham was interested in hearing what in this criteria are the keys to distinguishing a true youth camp from a resort. Mr. Jinings replied that scope, number and intensity of permanent facilities are the primary distinguishing factors.

Commissioner McRobert said limiting the number of buildings is not to protect the forest under the goals for commercial logging, but one of the determinants for a youth camp is the number of buildings. Mr. Jinings replied that it is a distinguishing factor, but limiting the number of buildings or types of buildings directly affects a camp's likelihood of fitting in the forest environment. That is one of the tools to use that once a camp is sited it does not have negative impact on forest activities.

Commissioner Van Landingham said the language about public benefit corporations was too limiting. It should include religious corporations. Non-profits include mutual benefit corporations which the department may not want to include in the rule. Regarding "facility owned and operated," Commissioner Van Landingham said often non-profits can have a tax advantage if they operate a facility. He asked if they needed to own it also. Mr. Jinings believed that particular language came from the

bill and asked if it was an issue for the commission. Director Benner noted the commission had received testimony about a facility on leased land

Regarding limiting the number of campers, Commissioner Van Landingham said it would be okay to allow some flexibility to exceed that a certain number of nights per year, keeping in mind the goal is to avoid a resort. Commissioner Harris said he was reluctant to go over 350 people on 80 acres. Commissioner Berryman said the number of campers came back to what size of facility is being built.

Commissioner McRobert said she was comfortable about being specific when goal is to protect forest land. She would rather local people think about the variables. Director Benner noted that one of the participants on the work group said her goal was to ensure that camp activities were limited to camp property. Commissioner McRobert agreed. Commissioner Pfeiffer suggested a camper density provision. Mr. Jinings said that concept was discussed and abandoned. What the working group came up with was a maximum amount—40 acres was as small as you could get 350 people on without spilling over to outside the property.

Commissioner Berryman preferred to keep determinations in putting the camp together at the local level. There are always variations in the land etc. and what resources fall in that property. This commission cannot second-guess what that is going to be. She wanted to ensure the language left those determinations in the hands of local government.

Regarding the discussion of 80 acres, 40 acres west, and buffer, Commissioner Vars said accepting the 80/40 acres and buffer could use a density standard and then the local government could get to a camp size that would fit the circumstances.

Commissioner Pfeiffer believed people would opt for certainty before discretion. He asked if the commission wanted to pick something they feel comfortable would meet the test. Director Benner said the department would try to establish one or more criteria to be used by the local government.

Commissioner Vars said the crucial point is containment. The number and density is of less importance to him than buffering.

7. Consideration Of Objection Filed With DLCD Regarding City Of Wilsonville's Periodic Review Work Task#4, Adoption Of Public Facilities Strategy; Referral To Commission For Review And Action.

Commissioner Pfeiffer excused himself. He has been involved in the Wilsonville public facilities strategy.

Richard Whitman, Assistant Attorney General, outlined the process for the commission. The hearing was on a referral from the director on a work task for

periodic review of the City of Wilsonville. The particular work task is the preparation of a public facilities strategy. The work task was submitted, and an objection was filed to that work task. The director's report was issued and exceptions have been filed to the director's report so it is now before the commission.

Meg Fernekees of the department staff presented the staff report.

The City of Wilsonville is currently in Periodic Review. On December 27, 1999, the Department issued an order that modified the approved work program to include a new work task, #4, preparation of a Public Facility Strategy.

Over two years before, the City of Wilsonville enacted a development moratorium due to inadequate water capacity. The statutory two year maximum time period ran out on January 5, 2000. The City plans to construct a new Willamette River water intake and treatment plant by April 2002. The City purchased a 30-acre site and in the fall of 1999, city voters approved a \$25 million bond for its construction. However, the City must find a way to regulate water use between now and the time the plant is on line. The city believes that a growth management limitation on new development is justified to prevent a shortage of water service capacity. The City in particular wants to be able to phase in new development over time, without having to resort to full emergency summer water restrictions which would lead to "brown out" of the physical landscape.

Therefore, on January 3, 2000, the City adopted Ordinance No. 514, for Public Facilities Water Strategy, in conformance with ORS 197.768. This statute enables a local government to carry out a public facilities strategy (PFS) if the Commission acknowledges it under ORS 197.251 **OR** approves it as a periodic review work task under ORS 197.628 to 197.646. The latter process constitutes the operative course of action before the Commission.

A PFS allows a local government to control or manage development in response to identified public facilities deficiencies. Further, a PFS is not a moratorium as described in ORS 197.505.

Subsequent to adoption, the City mailed a notice of decision dated January 12, 2000.

Mr. Whitman outlined the history to this situation. The moratorium has expired. In the 1999 legislative session, the city worked to pass another statute that specifically provides for preparation of public facilities strategies. A public facility strategy is a means for controlling or phasing development during times of shortage of key public facilities. A key for controlling demand for public facilities. The objection filed by citizens says the city should be looking at other means of supplying this particular public facility—water supply. The objection does not go to the demand, but to the supply, which is confusing. In the director's report he has tentatively recommended to the commission that it accept the objection as valid. Mr. Whitman believed the

commission should uphold the director's recommendation and hold the objection as valid. Citizens for Clean Water is appearing as a representative of Mr. Leary, who did appear before the city. Representational standing allows an entity to appear on behalf of one of its members. The city alleges that should not be allowed. Mr. Whitman said that was a defensible position, but a safer course is to let the objection in the door and deal with it on its merits.

Secondly, Mr. Whitman said, the commission needs to make a decision whether to uphold or reject the objection. Staff recommendation is to reject the objection.

Thirdly, Mr. Whitman said, if the commission decides to go along with director's recommendation, they should authorize the director and department to prepare a final order on behalf of the commission and authorize the director to execute that order. That will tie up the ends on the validity of this objection, and make sure the order includes all the necessary findings.

Commissioner Van Landingham asked if the commission must we allow the objectors to testify. Mr. Whitman said that was completely discretionary, but if the objectors were allowed to testify, the commission would need to allow the city to speak as well.

It was MOVED by Commissioner Vars and seconded by Commissioner Harris to accept the objection received from Citizens for Clean Water as a valid objection. The motion passed unanimously.

It was MOVED by Commissioner Vars, seconded by Commissioner Van Landingham and passed unanimously to allow testimony of five minute per side, only on the evidence in the record.

Mr. Whitman clarified for the record that no new facts may be introduced that are not already in the record. The record before the commission includes the local record on ordinance 514, submittal of work task ordinance 514, the original objection, the city's motion to dismiss, the director's report and short letters from city of Wilsonville and from Citizens. Mr. Whitman has reviewed the record so he will monitor the testimony.

Delores Scott and Dr. Charles Scott testified for Wilsonville Citizens for Safe Water. Their main concern is for water. Right now the city is authorizing \$90 million of construction for water. As this construction goes forward, the assumption is there will be enough water until April 2002. They have filed a lawsuit against the city for a declaratory judgment. If they win they will get the right to vote on a treatment. They are requesting the city come up with another plan if the treatment plant is not up and running by 2002 about what the city do for water. The city is not protecting the current residents of Wilsonville. Dr. Scott, looked at river sampling. The testing has not been completed. Mr. Whitman noted the sampling issue was not in the record.

Dr. Scott said the treatment plant would be prevented if they find something in the river which would prevent taking water from the Willamette.

Commissioner Harris asked what would be the effect of a vote. Mr. Whitman replied if the declaratory ruling prevails, the water treatment plant will not be built. Commissioner McRobert recalled there had been a previous vote. Dr. Scott replied that the city charter has been amended so city says it will not honor the city charter, and is now asking for right to vote on whether or not to use drinking water from the Willamette.

Mike Kolhoff, city attorney, and Robert Hoffman, manager of current planning, testified on behalf of the City of Wilsonville. The city does not have any exception to the remainder of the director's report. They support the report and recommendation for approval.

It was MOVED by Commissioner Vars, seconded by Commissioner McRobert and passed unanimously to accept the staff recommendation and reject the objection of Wilsonville Citizens for Safe Water.

It was MOVED by Commissioner Vars, seconded by Commissioner Van Landingham and passed unanimously to direct the director to prepare a final order.

**8. Response To Appeal Of DLCD's November 24, 1999 Order Remanding The City Of Cascade Locks Periodic Review Works 1 And 2**

Rob Hallyburton of the department staff presented the staff report.

Pursuant to OAR 660-025-0150, the Department of Land Conservation and Development (DLCD) issued a report and order in response to Cascade Locks' submittal for periodic review Task 1 (develop community vision, planning strategy, and background information) and Task 2 (update comp plan and land-use regulations in response to issues identified in Task 1). The department's order remanded the work tasks in order for the city to address certain deficiencies in the submittal. DLCD received two timely appeals of its order, from Jillian Barker and Sandra Kelley.

The remand order responded to objections from Ms. Barker and Ms. Kelley, sustaining some of the objections and not sustaining others. The director also remanded the city's submittal for a deficiency not raised in the objections. Ms. Barker and Ms. Kelley appealed the department's decision, citing some of the objections that were not formerly sustained.

Richard Whitman, Assistant Attorney General, said the process was similar to last item. This is an appeal, but the rules are the same. The Commission can hear on written record, but can hear oral argument or even accept new evidenced if it wishes.

It was MOVED by Commissioner Vars, seconded by Commissioner Harris and passed unanimously to accept testimony.

Mr. Whitman noted the commission could allow new evidence in, but if it did, there is an additional issue that if the city has not had an opportunity to review and is not prepared to respond commission may need to delay action.

It was MOVED by Commissioner McRobert, seconded by Commissioner Berryman and passed unanimously to hearing testimony only on the written record.

Sandra Kelly presented written testimony. She said the Cascade Locks proposed comprehensive plan and land use regulations do not conform to the statewide planning goals and have not yet addressed the requirements of state law. She said the city had not included the public in the work program phase of its review. She expressed concern that the city had not adequately addressed Goal 5 provisions. She asked that the city be required to follow through and justify the rezoning of areas of concern. She said the commission could decide to maintain the protective conditional use requirement until the Goal 5 work is accomplished.

Keith Lyden, planning consultant, testified on behalf of the City of Cascade Locks. The city is willing to follow through with the issues in the staff report. The city is anxious to get the plan adopted. They would like to get most of it out of the way.

In response to Commissioner Vars, Mr. Lyden said the city supported the commission sustaining the director's order. Commissioner Vars asked if whether sustaining the director's recommendation would allow the city to move in the way the city has asked. Mr. Hallyburton replied it would.

It was MOVED by Commissioner Vars, seconded by Commissioner Van Landingham, to sustain the director's order and reject the appeal.

**9. Briefing On Urban Growth Boundary Amendments Process (Part Of The Goal 14 Project.)**

Lainie Smith of the department staff gave an overview of status of the project. Staff will be back at the April meeting for a workshop and will have draft rule amendments and draft goal concepts. Among the 10 goal hearings would be one in front of the commission.

Bob Rindy of the department staff briefed the commission on the work of the UGB working group.

Issues with Tentative Working Group Agreement:

- 1) Goal 14 (and implementing rules) will provide the sole set of standards, as much as possible, and procedures for establishing and amending a UGB.
- 2) There will be clear standards, rather than "factors," for establishing and amending a UGB.
- 3) Establishment and change of UGBs shall consider regional impacts and be coordinated on a regional basis as follows:
  - a) Affected jurisdictions shall be given notice and the opportunity to comment.
  - b) The city and county amending a UGB must make findings addressing the comments and other relevant facts regarding regional impacts to other local jurisdictions, special districts in the region, and schools including impacts to the contexts of communities, separation between communities to maintain identity; distribution of impacts and consolidation of services.
  - c) Consistent with required plans and agreements including coordinated population figures.
- 4) Standards for establishing and amending a UGB:
  - a) There is a demonstrated need for additional land to accommodate long-range urban population growth requirements, including housing, employment, public facilities, open space, and recreation.
  - b) Efficient use of land and public facilities within the existing UGB
  - c) Retention of agricultural and forest land as defined by the goals, giving higher protection to higher soil class lands to be consistent with ORS 197.298.
  - d) Provide an alternative sites analysis.

#### **10. Briefing on TGM Model Development Code and User's Guide, and TGM Infill and Redevelopment Handbook**

Gloria Gardiner of the department staff presented the staff report.

Regarding the Model Development Code, Ms. Gardiner said TGM program planners have found that outdated codes are the biggest obstacle to compact, multi-modal urban development; however, small communities do not have the resources to update or revise their codes. The User's Guide for Small Cities was developed to address this need. It is intended for voluntary adoption for the 197 Oregon cities with populations of 10,000 or fewer in order to update their ordinances for consistency with state planning policies, statutes and administrative rules, while implementing Smart Development practices.

The Infill and Redevelopment Handbook identifies the major obstacles to infill and redevelopment and suggests overall strategies for obstacle removal and incentives. The handbook provides specific tools to remove regulatory obstacles, including sample code provisions and sample code audit worksheets. A step-by-step process is provided for city planners, planning commissioners, and consultants involved in updating their communities' land use codes.

**11. Public Hearing And Possible Adoption Of Rules Regarding Application Of Goal 14 (Urbanization) To Rural Residential Zones In Exception Areas**

A verbatim transcript of this item is attached to and made a part of these minutes.

Respectfully submitted,

Carol St. Louis  
Commission Assistant

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Note: The attachment to the March 9-10, 2000 LCDC Minutes is a verbatim transcript of item 11 - Public Hearing and Possible Adoption of rules Regarding Application of Goal 14 (Urbanization) to rural Residential Zones in Exception areas. It was provided to the commission separately, and is on file at the Department of Land Conservation and Development.

