

March 12, 2026

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**VIA HAND DELIVERY TO  
JOHN SPECKMAN, ASSOCIATE PLANNER  
MARION COUNTY PUBLIC WORKS**

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

**RECEIVED**

MAR 12 2026  
Marion County  
Planning

**Re: Remington BESS, LLC Pre-Hearing Brief  
Marion County Planning Division AR 25-015**

Dear Chair Willis and County Commissioners:

On behalf of our client, Remington BESS, LLC, please find enclosed for filing one copy of the following materials in advance of the hearing scheduled to take place on March 18, 2026 in front of the Board of Commissioners:

- Remington's Pre-Hearing Brief
- Appendix A
- Exhibits 1-30

Thank you for your attention to this matter.

Sincerely,



Ryan C. Thomas

Enclosures

**BEFORE THE MARION COUNTY BOARD OF COMMISSIONERS**

**In the Matter of an Appeal by the Applicant, Remington BESS, LLC of a Decision by the Marion County Hearings Officer, dated January 21, 2026, Denying the Application for Administrative Review, Case No. 25-015**

**REMINGTON BESS, LLC  
PREHEARING BRIEF**

**I. INTRODUCTION**

Remington BESS, LLC<sup>1</sup> (“Remington” or “Applicant”) appeals the Marion County (“County”) Hearings Officer’s January 21, 2026 decision<sup>2</sup> denying Remington’s appeal of the County Planning Director’s (“Planning Director”) earlier denial of Remington’s application for Administrative Review for approval of the proposed construction and operation of a battery energy storage system facility (“BESS Project”) on 15 acres of Exclusive Farm Use (“EFU”) zoned land located in Marion County.<sup>3</sup>

The Hearings Officer erred in concluding that the BESS Project is not a “utility facility necessary for public service” under Marion County Code (“MCC”) 17.136.040(I) and applicable Oregon statutes, and in determining that Remington failed to demonstrate reasonable alternatives for siting the project based on one or more of the factors set forth in Oregon Revised Statutes (“ORS”) 215.275(2).<sup>4</sup>

This appeal is about two things: whether a battery energy storage system (“BESS”) is a utility facility necessary for public service, and if the answer to that question is “yes,” whether the Applicant demonstrated that it considered reasonable alternatives and that the BESS Project must be sited in the EFU zone based on consideration of one or more of the factors set forth in ORS 215.275. Here, the answer to both of those questions is yes.

The Hearings Officer’s denial of the BESS Project is wrong for at least five reasons:

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<sup>1</sup> RWE Clean Energy, LLC (“RWE”) is the parent company for the project applicant, Remington BESS, LLC.

<sup>2</sup> Referred to throughout this brief as the “Order.”

<sup>3</sup> Administrative Review (“AR”) 25-015.

<sup>4</sup> The relevant standards and definitions are set forth in state law at ORS 215.283(1) and ORS 215.275. The Marion County Code restates these requirements as they relate to utility facilities at MCC 17.36.040(I). Because the state statutes control, and local jurisdictions cannot add to or modify that framework, this brief references applicable state law throughout.

1. **The BESS is a Utility Facility.** The Order failed to recognize that the BESS is a utility facility pursuant to ORS 215.283(1)(c). As detailed in this brief, the term “utility facility” 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). The Hearings Officer erred by imposing entirely new standards not found in this controlling state law, including an ownership test, and by requiring BESS to directly deliver electric service, neither of which are the legal standard. Not only did the Hearings Officer misinterpret and misapply the law, the Order ignores substantial evidence in the record demonstrating that BESS are essential for utilities to store generated power and release that power back to the grid. They are a key component of providing electrical service and are utility facilities.
2. **For BESS to be Necessary for Public Service, One Factor, Not All, Must be Satisfied.** The Hearings Officer misinterpreted and misapplied the “factors” in ORS 215.275 and MCC 17.136.040(I) that must be considered by the Applicant in assessing non-EFU alternative sites. The Applicant needs to show only that considerations based on “one or more of the following factors” require siting the project on EFU land. Remington’s application is based on factors one, two, and three, which address technical and engineering feasibility, locational dependence, and the lack of available urban and nonresource lands. The other factors are not the basis of the application and should not be considered. Yet, the Order spends significant time addressing the public health and safety factor, which is not the basis of the application, and does so in a way that incorrectly interprets the factor by requiring the Applicant to show that the proposal will not adversely impact public health and safety. This conflates the standard, is not part of Applicant’s proposal, and is an erroneous application of the law.
3. **Counties Cannot Add Local or Other Restrictions to the Approval Criteria for Uses Allowed Under ORS 215.283(1).** The Hearings Officer impermissibly imposed additional substantive criteria on the BESS Project—namely that the farm impact test set forth in ORS 215.296 applies—an action prohibited for utility facilities necessary for public service under ORS 215.283(1)(c) and contrary to the express legislative set forth in ORS 215.296(1). The Oregon Supreme Court prohibits counties from applying local criteria or other non-statutory local restrictions to utility facilities necessary for public service: “[W]e conclude that the legislature intended that the uses delineated in ORS 215.213(1) be uses ‘as of right,’ which may not be subjected to additional local criteria.” *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030, 1038 (1995). Under *Brentmar*, the County is only authorized to apply the statutory provisions set forth in ORS 215.275. Further, ORS 215.296(1) clearly states that the farm impact test applies only to uses identified in ORS 215.283(2) and (4), and not uses allowed under subsection (1). Accordingly, the Hearings Officer’s application of additional review standards or criteria is prohibited as the BESS Project falls under ORS 215.283(1). *Hanson v. Yamhill County*, State Land Use Board of Appeals (“LUBA”) No. 2024-065 (Final Opinion and Order) (Jan. 27, 2025).
4. **The Focus on Speculative Public Risks is Unfounded and Irrelevant.** The Hearings Officer’s reliance on speculative assertions about the risk and dangers of BESS to support

denial is misplaced two reasons. First, “public health and safety” is one of the six factors under ORS 215.275 that can support a determination to allow a utility facility necessary for public service to be sited on EFU land, based upon consideration of whether the proposed utility use poses a significant risk such that it should not be located in more densely developed urban areas, and instead should be located on rural EFU lands. The Hearings Officer concludes with no evidentiary support, that the BESS Project is so dangerous that those risks alone could support denial. The evidence in the record shows the contrary. The Turner Fire District reviewed the application and provided technical comments about specific code standards that would apply, but expressed no concern about the BESS Project and did not oppose its approval. And Remington provided testimony that BESS systems are designed to national standards including National Fire Protection Association (“NFPA”) rule 855 with little fire risk, and that secondary fire suppression and containment mitigation measures are in place both in the equipment itself and in the site design in the event that the first-line fire prevention systems fail. Second, Remington has not relied upon the public health and safety factor to justify siting the BESS Project on EFU land; instead, Remington relies on the technical and engineering feasibility, and locational dependence and unavailability of urban/non-resource lands to support the finding that the BESS is a utility facility necessary for public service which requires an EFU location. ORS 215.275 does not require any consideration of potential public health or safety risks.

5. **The County’s Ordinance Attempting to Ban BESS Violates State Law as Applied to EFU Zoned Lands, and is Void as Applied to EFU Land.** The Planning Director’s initial denial relied on County Ordinance 1480 (the “Ordinance”), which bans BESS in all County zone designations. The Hearings Officer did not rely on the Ordinance, but did reference it throughout the Order. Therefore, it bears restating that the Ordinance is both invalid on its face as to EFU-zoned land and cannot apply to the current application because submission of the complete application predates the adoption of the Ordinance. It is well established under Oregon law 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*, LUBA No. 2024-065; *Riggs v Douglas County*, 167 Or App 1, 9-10, 1 P3d 1042 (2000). Here, the County’s outright ban of BESS conflicts with the plain language set forth in ORS 215.283(1) that utility facilities necessary for public service are allowed in EFU zones subject only to compliance with ORS 215.275. Consequently, this aspect of the Ordinance constitutes an impermissible additional local criterion or restriction. The Ordinance as applied to EFU-zoned land is therefore void as contrary to applicable statutory requirements under the *Brentmar* ruling. *See Brentmar*, 321 Or 481.

In summary, the BESS Project constitutes a utility facility necessary for public service under ORS 215.283(1)(c), and Remington’s analysis and supporting evidence demonstrate Remington complied with ORS 215.275 to show that application of at least one of the statutory factors demonstrates that the BESS Project must be sited on EFU land. The Hearings Officer’s decision to deny the application misconstrued the applicable law and the Hearings Officer’s findings are unsupported by substantial evidence.

The Board should reverse the Hearings Officer’s denial, and approve AR 25-015.

## II. FACTUAL BACKGROUND AND CONTEXT

### A. BESS Are Necessary Components of Oregon’s Energy Infrastructure

As described in detail in Remington’s Prehearing Brief before the Marion County Hearings Officer<sup>5</sup> prior to the public hearing, BESS are a necessary and essential part of Oregon’s energy infrastructure and future, especially as Oregon pursues ambitious renewable energy targets set by House Bill (“HB”) [2021](#).<sup>6</sup> To meet these targets, the Oregon legislature and the Oregon Department of Energy (“ODOE”) require the integration and development of BESS. In response, electric utilities, like PacifiCorp and Portland General Electric (“PGE”), have cited the need for additional storage resources in their clean energy and integrated resource planning documents, in order to deliver clean energy to the grid. As detailed below, the BESS Project responds specifically to that need for PacifiCorp within its Willamette Valley Service Area.<sup>7</sup>

#### 1. Oregon State Requirements for BESS

BESS facilities collect electric energy generated from energy sources (like the electrical grid, wind, solar, geothermal sources, etc.) and transmitted through the electrical grid, store that 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 when needed most. *See* [HB 4015](#) amending ORS 469.300(5) to define BESS. BESS expand the benefits of renewable resources that are generated intermittently (like solar energy produced in daytime hours), allowing the overall grid to make use of that energy at a time of higher residential demand (nighttime hours).<sup>8</sup> Unlike electric generation resources that require ramp up and ramp down time, batteries can instantly dispatch the exact amount of electricity needed when demand rises.<sup>9</sup>

BESS are integral to Oregon’s energy utility services because they provide flexibility and reliability to power systems, particularly as Oregon pursues “ambitious renewable energy targets and seeks reliable, resilient power solutions.”<sup>10</sup> According to ODOE, BESS are “key tool[s] to integrate renewable resources into the electricity grid.”<sup>11</sup>

Several Oregon laws recognize the importance of integrating storage solutions in order to increase the use of renewable electricity and improve resilience of the power grid. For example:

- [HB 2193](#) requires electric companies to procure one or more qualifying energy storage systems that have capacity to store at least 5-megawatt (“MW”) hours of energy to

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<sup>5</sup> Exhibit 1 – Remington’s Prehearing Brief before the Hearings Officer.

<sup>6</sup> The text of HB 2021 is attached as Exhibit 2. The text of HB 4015 is attached as Exhibit 3.

<sup>7</sup> *See* Appendix A (Remington Alternatives Analysis) which describes this service area.

<sup>8</sup> *See* Exhibit 4 - Grid Reliability 101, American Clean Power (February 2024).

<sup>9</sup> *See id.*

<sup>10</sup> Exhibit 5 - Overview of Battery Energy Storage Systems for the May 16, 2025 EFSC Meeting (May 2, 2025), also available at: <https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2025-05-16-EFSC-Item-C-Staff-Report-Battery-Storage-Technology-Overview.pdf>

<sup>11</sup> *See* Exhibit 6 - Energy Storage, Oregon Dep of Energy, Safety & Resiliency, also available at: <https://www.oregon.gov/energy/safety-resiliency/Pages/Energy-Storage.aspx>.

provide reliable energy supplies. As summarized by the Oregon Legislature: “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 peak load. Many renewable energy sources, most notably solar and wind, produce intermittent power. Energy storage is one option to provide more reliable energy supplies.”<sup>12</sup>

- [HB 2021](#) requires retail electricity providers to reduce greenhouse gas emissions associated with electricity sold to Oregon consumers to 80% below baseline emissions levels by 2030, 90% below baseline emissions levels by 2035 and 100% below baseline emissions levels by 2040. To meet these ambitious targets, ODOE developed an energy strategy for Oregon, which specifically emphasizes the need for integrated storage solutions: “Investments in electricity generation, transmission, distribution, *and storage facilities* are critical to meeting Oregon’s economy wide clean energy goals. In the near term, this means planning for and investing in resources that can be built quickly, including distributed technologies like solar, *storage*, demand-side flexibility, and utility-scale resources *wherever they can be connected to electric grids*.”<sup>13</sup>

## 2. Electrical Utilities Need BESS

In an effort to meet these statewide targets, electrical utilities, like PacifiCorp and PGE, have incorporated the use of energy storage systems, including BESS, into their integrated resource planning and clean energy planning. Overall to meet HB 2021 emission reduction goals, PacifiCorp anticipates needing 11,838 MW of new proxy resources to serve Oregon customers’ energy and capacity needs, including 3,835 MW of storage resources.<sup>14</sup>

PacifiCorp’s 2025 Integrated Resource Plan (“IRP”), and resulting Sitis Requests for Proposals (“RFPs”), affirm this need.<sup>15</sup> The 2025 Oregon Sitis 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 MWs of new 4-hour lithium-ion battery storage resources needed in PacifiCorp’s Oregon service

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<sup>12</sup> Exhibit 7 - HB 2193A, House Committee on Energy and Environment, 2015 Regular Session, Final Measure Summary (Apr. 21, 2015).

<sup>13</sup> Exhibit 8 - ODOE, Oregon Energy Strategy, Draft for Public Comment (Aug. 2025) at 18, also available at: <https://www.oregon.gov/energy/Data-and-Reports/Documents/DRAFT-Oregon-Energy-Strategy.pdf>.

<sup>14</sup> See Exhibit 9 - PacifiCorp, Oregon 2023 Clean Energy Plan (“CEP”), dated May 31, 2023, at 12 (PacifiCorp has been attempting to procure over 2 GW of renewable, non-emitting, or storage resources), also available at: [https://www.pacificcorp.com/content/dam/pcorp/documents/en/pacificpower/about/2023\\_Oregon\\_Clean\\_Energy\\_Plan\\_October.pdf](https://www.pacificcorp.com/content/dam/pcorp/documents/en/pacificpower/about/2023_Oregon_Clean_Energy_Plan_October.pdf); Exhibit 9(a) - PacifiCorp, Clean Energy Plan Engagement Series Meeting, August 20, 2025 (2025 CEP: Key Findings) at Slide 13; Exhibit 9(b) – PacifiCorp, Oregon Clean Energy Planning Supplement, Docket No. LC 82 (Apr. 1, 2024) at 4.

<sup>15</sup> Exhibit 10 - PacifiCorp Integrated Resource Plan (“IRP”) (Mar. 31, 2025) at 243, 245 stating PacifiCorp’s 2025 preferred portfolio includes “significant storage resources,” also available at: <https://www.pacificcorp.com/energy/integrated-resource-plan.html>



### C. The BESS Project Fulfills Project Objectives and Specific Siting Criteria

The BESS Project fulfills general and specific project objectives necessary to provide battery energy storage services to the PacifiCorp electrical grid in PacifiCorp's Willamette Valley Service Area. Remington developed a detailed Alternatives Analysis to evaluate which sites in the Willamette Valley Service Area would meet the project objectives and siting criteria. Remington's Alternatives Analysis is attached as Appendix A.

As described in the Remington Alternatives Analysis, in addition to the general objective of providing storage for electricity for grid balancing purposes, specific BESS Project objectives include:

- Responding to the eligibility and scoring criteria in PacifiCorp's 2025 Oregon Situs RFP such that the project will be commercially viable with PacifiCorp as the offtaker;
- Connecting to a PacifiCorp-owned substation in PacifiCorp's Willamette Valley Service Area;
- Building a storage capacity of at least 199 MW of BESS;
- Providing enhanced grid reliability, resiliency, and stability;
- Enabling integration of renewable energy resources into the grid and avoid rolling blackouts or loss of power;
- Maximizing the existing system's capability and improve PacifiCorp's ability to serve growing customer loads while reducing the risk of voltage collapse;
- Furthering the ability to provide peak shaving and load management;
- Supporting and defraying infrastructure costs to the transmission system;
- Providing backup electrical support to the grid that supports disaster recovery and critical infrastructure continuity services; and
- Assisting Oregon in meeting its greenhouse gas emissions reduction goals of 80% by 2030, 90% by 2035, and 100% by 2040, as required by Oregon's Clean Energy Bill (HB 2021).

The BESS Project was sited at the current location based on Remington's analysis of the above project objectives, together with specific siting criteria for Applicant BESS projects. The siting criteria are detailed more fully in the Remington Alternatives Analysis and include the following:

- Location: within PacifiCorp's Willamette Valley Service Area.
- Proximity to Point of Interconnection (i.e., a utility-owned substation): Within one mile of a PacifiCorp-owned substation to account for utility crossing, franchise, encroachment

and easement agreements, engineering complexity, and power loss through transmission lines (note that for BESS, power must travel in both directions, in and out of the facility via project transmission lines).

- Substation voltage class and transfer capacity: 115 kilovolt (“kV”) or higher substation with “available transfer capacity,” meaning the specific substation can accept the BESS Project’s power within the proposed timeframe (in this case, by the end of 2029).
- Land availability: A minimum of fifteen contiguous acres of available land in order to site at least 199 MW of storage capacity (1 acre per 20 MW), plus 2 acres for a project substation and three acres to account for access roads, zoning-related setback requirements, environmental buffers, and the ability to increase project capacity by up to forty additional MWs. Setting aside land for future expansion is an industry-standard practice where feasible due to the favorable economies of scale for increasing capacity at existing sites compared to new sites. “Available” land is defined as land that could feasibly be leased or purchased for use as a BESS facility, as further described in Appendix A.
- Feasible network upgrades: Network upgrades are the developer-funded, utility-constructed upgrades to PacifiCorp’s facilities that would be necessary to allow the BESS Project to connect to the grid. These can consist of new breakers at the POI (PacifiCorp substation), new or extended transmission lines to create the grid capacity to charge and/or discharge storage resources, and other necessary equipment upgrades. Each project that enters the PacifiCorp interconnection queue and goes through a System Impact Study is assigned network upgrades based on the utility’s assessment of what is needed to accommodate the project. The feasibility of network upgrades can be measured in time and cost.
  - Timing: PacifiCorp (and any other affected utility systems) requires enough time to design, permit, procure equipment for, and install the necessary network upgrades. Procurement (i.e., purchasing and receiving equipment) can be one of the longest-lead time portions of this process due to the high demand for and limited production capacity of breakers, transformers, poles, and other equipment that often must be ordered several years in advance of delivery. The PacifiCorp 2025 OR Situs RFP includes a criterion of having a guaranteed commercial operation date on or before December 31, 2029. Therefore, the chosen POI must not require network upgrades that cannot be completed by mid-2029.
  - Cost: Interconnection at the chosen PacifiCorp substation does not result in Network Upgrade costs that would render the project financially infeasible. For the purposes of this analysis, Applicant considered Network Upgrade costs above \$20 million to be prohibitive.
- Lack of slopes: slopes less than 15% to avoid substantial technical challenges, permitting challenges, and construction costs for ground disturbance, leveling (cut and fill), stabilization, and shoring to accommodate the BESS foundations. Developing BESS on

steep slopes results in loss of topsoil, substantially longer site preparation time, potential instability, and increased noise, dust, and risk of erosion.

- Lack of wetlands or other water features: within the project area, no regulated wetlands, water features, or environmentally critical areas that would impede development, reduce the available land, and could result in project impacts.
- Zoning: land use zoning allows for the permitting of utility facilities.
- Access: sufficient site access is available, including the ability to deliver construction equipment, BESS modules, utility poles, and other equipment without creating the need for substantial road construction.
- Avoids interference with existing utility easements: due to ground clearance needs, height constraints, inability to cross private and public lands, and space constraints.

**D. Remington’s Project Objectives and Siting Criteria Require the BESS Project to Be Sited at the Parrish Gap Substation**

In light of the foregoing objectives and criteria, Remington evaluated potential sites for the development of the BESS Project. As described in detail in Appendix A, to identify potential BESS project locations, Remington first identified eligible PacifiCorp-owned substations within the utility’s Willamette Valley Service Area. Remington focused on this service area due to information about demand, grid balancing, and anticipated transmission upgrades provided by the utility in its IRPs (2025 and previous years’ IRPs) and additional available transfer capacity (“ATC”) analyses performed by Applicant. The ATC analysis aggregates data from a variety of sources regarding substation capacity, ownership, prior studies, and other relevant data that helps Applicant collect and analyze data about substations, ultimately providing information about the likelihood of available transfer capacity at any given substation. *See* Appendix A for more details.

PacifiCorp’s transmission system in the Willamette Valley Service Area is non-contiguous with its system in Washington and Central Oregon, connected only by transmission lines owned by other utilities. To store energy located within the Willamette Valley Service Area, the BESS Project has to be located within the same area. *See* Appendix A, Maps 1 and 7. Locating storage outside of the area would trigger “wheeling” charges (charges for transferring, or “wheeling,” electricity through lines owned by other utilities). *See* Appendix A at 6. It would also increase the transmission line loss, which is the loss of electricity from the system as it is carried over long distances. *Id.*

To identify viable sites that met both project objectives and siting criteria, Remington used queries of numerous databases, reviewed transmission studies available from PacifiCorp, and conducted other desktop and field research. Remington initially identified thirty PacifiCorp-owned substations with 115kV or higher within the study area. The additional ATC analyses then narrowed this list of eligible substations to 6 that may have available transfer capacity. Using the list of six substations developed based on the ATC analysis, Remington then used GIS mapping to apply filters and narrow eligible BESS Project sites based on the siting criteria

explained above, for example, land with appropriate zoning within one mile of the eligible substations. See Appendix A, Maps 1 to 6. With the siting criteria and project objectives applied, only the Remington Parrish Gap site is feasible.

The table below summarizes Remington’s analysis of potential alternative sites, which is provided in more detail in Appendix A.

Table 1: Substation Summary and Remington Analysis<sup>23</sup>

Substation Name	Voltage Class	County	Analysis
Parrish Gap	230 kV	Marion	No non-EFU lands meet the siting criteria. One R-AR zoned parcel within 1 mile of Parrish Gap Substation met land size requirements, but topography showed slopes greater than 15%.
Jefferson	115 kV	Marion	No non-EFU parcels within 1 mile of the Jefferson Substation met the land size and availability, and/or lack of water features requirements.
Diamond Hill	230 kV	Linn	No non-EFU zoning within 1 mile of the Diamond Hill Substation.
Fry	230 kV	Linn	No non-EFU zoning within 1 mile of the Fry Substation.
Calapooya & Brownsville	230 kV 115 kV	Linn	No non-EFU parcels (or potential assemblage of parcels) within 1 mile of the substations met the land size and land availability requirements.

### III. PROCEDURAL HISTORY

#### A. Marion County Approved a Similar BESS Project in 2024

On June 18, 2024, roughly a year prior to the submittal of the AR 25-015 application at issue in this appeal, the Planning Director approved a very similar BESS project, also owned by Applicant’s parent company, on a 32-acre parcel in the Special Agriculture (“SA”) zone (the “Swift Project”).<sup>24</sup> See Exhibit 13, Administrative Review Case No. 24-009.<sup>25</sup> For that project, the Planning Director determined the BESS qualified as a “utility facility necessary for public service” under MCC 17.36.040(I). *Id.* The only apparent basis for the Planning Director’s opposite finding here relies on the aforementioned Ordinance now banning BESS. As described in more detail below, this basis provides no legal support for the Planning Director’s decision as

<sup>23</sup> See Appendix A for the full analysis.

<sup>24</sup> The SA zone similarly allows utility facilities necessary for public service as a nonfarm use and applies the same criteria. MCC 17.137.040(I).

<sup>25</sup> Exhibit 14, AR 24-009, is also available at: <https://www.co.marion.or.us/PW/Planning/Documents/AR24-009.pdf>.

the Ordinance is inapplicable to EFU lands under the Oregon Supreme Court ruling in *Brentmar* and pursuant to ORS 215.427(3)(a).

### **B. Remington Prepared the Current BESS Project Application in 2025**

Subsequent to that approval, Remington began preparing the current application, targeting submission in June 2025. Remington participated in regular conversations with the Planning Director and staff regarding the preparation of application materials. In early March 2025, the County expressed no concern during the pre-application for the BESS Project, and County staff instructed Remington to submit the BESS Project in the same fashion the Swift Project application was submitted.

On June 30, 2025, Remington filed the current application for Administrative Review under MCC 17.36.040(I) to construct and operate the BESS Project.<sup>26</sup>

### **C. In June 2025, Remington Learned the County Planned to Ban BESS**

On June 25, 2025, Remington learned through media reports that the County was proposing a code amendment to ban BESS facilities from being sited in all zones within the County.<sup>27</sup> Neither Remington nor the property owner received notice of this proposed amendment, and after months of preparation, were shocked to hear the news.<sup>28</sup> By the time the relevant stakeholders were aware of the proceedings, the public record had closed and the parties were unable to submit formal written comments concerning the Ordinance.

In a July 10, 2025, email, the Planning Director wrote that the County did not provide notice to the property owner or Remington of the proposed amendments because “the amendments don’t affect the BESS already approved on [the] property, nor the recent application” submitted for the BESS Project.<sup>29</sup>

On July 9, 2025, the Marion County Board of County Commissioners (“Board”) considered the proposed code amendments banning BESS in all zones, which it adopted that day as Ordinance 1480.<sup>30</sup> MCC Title 16 (Marion County Urban Zone Code) and MCC Title 17 (Marion County Rural Zone Code) were amended to read:

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.

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<sup>26</sup> See Exhibit 12.

<sup>27</sup> See Exhibit 15- Marion County Board of Commissioner’s Agenda Review Form, *also available at:* [https://www.co.marion.or.us/BOC/Documents/2025%20Current%20Board%20Session/7\\_PW\\_%20Sched%20Ordin%20Adpt\\_Battery%20Energy%20Storage%20Systems.pdf](https://www.co.marion.or.us/BOC/Documents/2025%20Current%20Board%20Session/7_PW_%20Sched%20Ordin%20Adpt_Battery%20Energy%20Storage%20Systems.pdf). On April 15th, 2025, the Marion County Board of County Commissioners held a work session to discuss BESS facilities within the County.

<sup>28</sup> Exhibit 16, Letter from C. Gispert to Marion County Board of Commissioners dated July 9, 2025.

<sup>29</sup> Exhibit 17, Email from Brandon Reich to John Lewis, July 10, 2025, forwarded by Cristina Gispert.

<sup>30</sup> Exhibit 18, LA 25-001, Legislative Amendment, Administrative Ordinance No. 1480 related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

Remington provided comments in opposition at the Board's July 9 meeting. Remington also provided oral comments at the hearing, expressing concern that as a project applicant and on behalf of the property owner, no notice had been provided.<sup>31</sup>

The Planning Director, who ultimately issued the application denial in the instant case, presented oral testimony which expressly assured the Board that the BESS Project would not be subject to Ordinance, referring to the property owner:

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.<sup>32</sup>

The Planning Director's representation that the BESS Project application would not be affected by the legislation appeared to address a concern of the Board, and Remington reasonably relied upon the assurance that its application would not be affected by the newly enacted ordinance. But that comfort was short lived given the following contradictory findings in the Planning Director's denial, issued three weeks later, stating:

The Marion County Board of Commissioners signed Ordinance 1480 on July 9th, 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 9th, 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.<sup>33</sup>

In sum, despite the Planning Director's initial comments, the Planning Director still applied the Ordinance to deny Remington's application. As noted above, the Planning Director's conclusion as to the applicability of the Board's action was contrary to established law. The Hearings Officer's decision acknowledges this by not applying the Ordinance to the instant application.

**D. The Planning Director Denied the BESS Project and Remington Appealed to the Hearings Officer**

On August 1, 2025, the Planning Director denied Remington's application concluding that due to the passage of the Ordinance, BESS are not "utilities facilities" and there is not any other use they could fall under, therefore they are not allowed in any zone. The County further determined

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<sup>31</sup> See Exhibit 16.

<sup>32</sup> Exhibit 19 - Board of Commissioners for Marion County July 9, 2025 Meeting Transcribed at 3.

<sup>33</sup> Planning Director Denial at 3.

that even if BESS were to be allowed, the BESS Project does not qualify because Remington failed to satisfy applicable utility facility “necessity” criteria.<sup>34</sup>

On August 14, 2025, Remington timely filed a Notice of Appeal<sup>35</sup> under ORS 215.417 and MCC 17.115.110 to the Hearings Officer identifying six legal errors, including that:

- The Planning Director’s 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 Oregon Administrative Rules (“OAR”) 660-033-0130(16) regarding utility facilities necessary for public service;
- The Planning Director’s 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*, 321 Or 481;
- The Planning Director’s decision was factually incorrect and not supported by substantial evidence;
- The Planning Director’s decision incorrectly concludes that BESS cannot be utility facilities necessary for public service;
- The Planning Director’s decision incorrectly concludes that the BESS Project could not satisfy one or more of the factors in MCC 17.136.040(I); and
- The Planning Director’s decision improperly applies of ORS 215.296.

The Notice of Appeal is attached as Exhibit 20.

After the appeal was filed, Planning Department staff told Remington that the reason for the denial was the Ordinance. In the course of corresponding with the Remington and Remington’s counsel regarding scheduling this appeal hearing, the Planning Department staff stated plainly to Remington’s counsel that the Ordinance was the central rationale for denying the BESS Project, telling Remington that it would lose before the Hearings Officer and the Board because BESS “are not allowed in any zone in Marion County:”

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).<sup>36</sup>

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<sup>34</sup> Planning Director Denial at 3.

<sup>35</sup> Exhibit 20 – Remington Notice of Appeal

<sup>36</sup> Exhibit 21 – Email from Associate Planner, John Speckman dated October 8, 2025.

As described above, the Planning Director’s focus in denying the application was on the County’s Ordinance prohibiting BESS in all zones within the County.

**E. The Hearings Officer Denied the BESS Project, and Remington Appealed to the Board**

On November 6, 2025, the Hearings Officer held a public hearing on AR 25-015. John Speckman on behalf of the County Planning Division, representatives on behalf of Remington, and Brent Stevenson on behalf of the Santiam Water Control District (“SWCD”) testified at the hearing.<sup>37</sup> John J. Audley submitted written comments in support of the BESS Project application.<sup>38</sup> The record was held open to allow parties time to provide supplemental comments until November 13, 2025, and November 20, 2025, respectively. SWCD was the only party to submit supplemental comments<sup>39</sup> on November 13, 2025, and Remington filed its response on November 20, 2025.<sup>40</sup> On November 26, 2025, Remington filed its closing argument with the Hearings Officer.<sup>41</sup>

On January 21, 2026, 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). A copy of the Hearings Officer’s decision is provided as Exhibit 22 (the “Order”).

Remington timely filed this appeal on February 4, 2026, pursuant to MCC 17.122.120 as an aggrieved and affected party.<sup>42</sup> 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.

Remington’s Notice of Appeal identified 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, including but not limited to the following errors:

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

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<sup>37</sup> Exhibit 23 – Transcription of Audio Recordings of Hearings Officer Public Hearing on AR 25-015

<sup>38</sup> Exhibit 24 – Testimony from John. J. Audley in Support of Application AR 25-015.

<sup>39</sup> Exhibit 25 – SWCD Supplemental Comments to Remington BESS AR 25-015.

<sup>40</sup> Exhibit 26 – Remington’s Response to SWCD’s Supplemental Comments BESS Project, File No. AR 25-015.

<sup>41</sup> Exhibit 27 – Remington’s Closing Argument.

<sup>42</sup> Exhibit 28 – Remington’s Notice of Appeal to the Marion County Board of County Commissioners.

(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. Applicant applied under factors (a), (b), and (c) under ORS 215.275, yet the Order analyzed the BESS Project 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 Applicant rather than an optional factor (which Applicant is not applying under); the Order also unlawfully analyzes the health and safety factor within the locational dependence factor.
7. The Hearings 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 Applicant 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, Applicant provided evidence from the owner of the land to demonstrate that the BESS Project 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 sections that follow further describe how and why the Hearings Officer’s decision and legal conclusions are incorrect and the Order should be reversed.

#### **IV. ARGUMENT**

This section describes the applicable statutory criteria that apply to siting a utility facility on EFU land in Oregon, then applies that framework to the BESS Project. The heart of the issue is whether a BESS is a utility facility (yes), and whether Remington has demonstrated that there are no reasonable alternatives outside of the EFU zone to site the BESS Project (it has). This section then speaks to the limitations on counties to regulate utility facilities on EFU land, and describes why the Ordinance (banning BESS in all of Marion County) is void as it applies to EFU land.

##### **A. Relevant Utility Facility Statutory Criteria**

Two statutes are most relevant to the Board’s review of this case. First, ORS 215.283(1)(c) allows for “[u]tility facilities necessary for public service” to be sited on EFU-zoned land.<sup>43</sup> Generally, land that a county has designated as an EFU zone under its comprehensive land use plan is to be used exclusively for farm use, unless otherwise provided by specific statutes, such as here. *See* ORS 215.203(1); *Sprint PCS v. Washington County*, 186 Or. App 470, 481, 63 P3d

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<sup>43</sup> Note that the difference between ORS 215.213(1)(c) and ORS 215.283(1)(c) is whether the County has adopted marginal lands system prior to 1993; however, the statutory language is the same for utility facilities. Because Marion County did not adopt a marginal lands system prior to 1993, ORS 215.283 applies.

1261 (2003) (utility facilities are permitted uses on EFU lands because they advance public utility service needs.). “Utility facilities necessary for public service” are allowed uses as of “right” subject solely to ORS 215.275 and counties may not impose additional criteria beyond the applicable statutes. *Brentmar*, 321 Or at 483. The key question, then, is whether the BESS Project is a “utility facility necessary for public service.” Subsection IV.B of this brief addresses why BESS are utility facilities.

Second, ORS 215.275 tells us how to determine whether a project is a utility facility that is “necessary for public service.” Subsection (1) says that a utility facility is “necessary” for public service if the facility “must be sited in an exclusive farm use zone in order to provide the service,” and subsection (2) sets out the “factors” which must be considered to demonstrate that a utility facility is “necessary.” The heart of Subsection (2) is that it requires showing that “reasonable alternatives” to siting on EFU land were considered, but that, because of one of six factors enumerated in the statute, it nevertheless was necessary to site the utility facility on EFU land. Subsection IV.C of this brief addresses in detail why the BESS Project satisfies the alternatives analysis requirement.

The relevant portion of ORS 215.275 states as follows:

(2) To demonstrate that a utility facility is necessary, an applicant...must 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:

- (a) Technical and engineering feasibility;
- (b) 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;
- (c) Lack of available urban and nonresource lands;
- (d) Availability of existing rights of way;
- (e) Public health and safety; and
- (f) Other requirements of state or federal agencies.

ORS 215.275(2); *see also* OAR 660-033-0130(16) implementing ORS 215.275.

The provisions of ORS 215.275 strike a balance between the need to site utility facilities on EFU land and the legislative policy to preserve farmland. *Sprint PCS*, 186 Or App at 475. The six factors in ORS 215.275(2) are intended to provide a “roadmap to courts and county hearings officers for what they are to consider and what not to consider when defining necessity.” *Id.* at 476. When deciding whether it is necessary to site a public utility facility on EFU land, local

governments must analyze any alternatives based on ORS 215.275. *Id.* They may not import additional policy considerations into their analysis. *Id.*

The two statutes combined tell us that two things are required to site a project on EFU land: (1) the facility is a “utility facility” and (2) reasonable alternatives were considered, but due to one or more of the factors—not all—the facility needs to be sited on EFU land. ORS 215.283(1)(c) and ORS 215.275 together with OAR 660-033-0130(16), are incorporated in the MCC at MCC 17.136.040(I).

**B. The BESS Project Fits Within the Broad General Category of “Utility Facility”; The Hearings Officer Misapplied and Misinterpreted Applicable Law to Find Otherwise**

The Hearings Officer incorrectly concluded that the BESS Project is not a “utility facility necessary for public service.”<sup>44</sup> The Hearings Officer misinterpreted and misapplied the law in six crucial ways, which are further detailed below:

**First**, by relying upon MCC 17.110.584<sup>45</sup> and related County implementing land use regulations rather than controlling state statute and implementing Land Conservation and Development Commission (“LCDC”) regulations to support the conclusion that the proposed BESS is not a utility facility subject to ORS 215.283(1)(c). Not only is the Hearings Officer’s conclusion inconsistent with MCC 17.110.584, MCC 17.110.584’s definition of “utility facility” does not control.<sup>46</sup>

**Second**, by concluding that BESS is not a utility facility because it “does not deliver electric service and does not require EFU siting to function.”<sup>47</sup> This is not the legal standard. As described below, Oregon courts defined “utility facility” to include “equipment or apparatus that functions to provide, in whole or in part, a service, with examples including transmission, distribution, or furnishing electricity. BESS provides a service by receiving and furnishing electricity based on the demands of the utility and larger grid. Similarly, neither ORS 215.275 nor case law require that siting on EFU land is necessary for the facility to function; instead, the standard of necessity is satisfied if the applicant considered reasonable alternatives and that the facility must be sited on EFU zone-land for one or more of the enumerated factors.

**Third**, by requiring that the owner of a “utility facility” be a regulated utility providing electrical service directly to customers.<sup>48</sup> There is no ownership test, and the Hearings Officer imposed an entirely new standard not found in controlling state law. Instead, as more fully described below, Oregon courts look at whether the utility facility “functions to provide, in whole or in part, a

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<sup>44</sup> Order at 9-12.

<sup>45</sup> 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, poles, 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.

<sup>46</sup> See *Hanson*, LUBA No. 2024-065 (citing *Riggs*, 167 Or App at 9-10).

<sup>47</sup> Order at 2.

<sup>48</sup> Order at 9 at ¶ 6.

service” which may include furnishing electricity. The BESS Project satisfies this definition, and the Hearings Officer’s conclusion is not supported by the statute or caselaw.

**Fourth**, by finding that BESS could operate independently of transmission or distribution facilities and therefore is not required to be located at a specific site to provide service.<sup>49</sup> This conclusion is not supported by the evidence the record. As described in detail in Sections II.A-II.D, BESS must be connected to such facilities to operate. BESS are a necessary part of the grid, particularly now as the grid begins to obtain an increasing amount of power from wind and solar generation. The Order ignores this evidence in the record.

**Fifth**, by concluding that ORS 215.283(1)(c) requires a showing that the utility facility “is required to provide the service.”<sup>50</sup> This conclusion incorrectly construes a “utility facility” as infrastructure that “directly delivers” utility service, treating system-support/storage as categorically outside the term. This imposes an entirely new standard not found in statute or case law.

**Sixth**, the Order creates a new test that requires a showing that “but for” the facility, service could not be provided.<sup>51</sup> The Order’s statement that PacifiCorp would “continue to provide electric service” without the BESS misstates the legal question which focuses on (a) whether the utility facility “functions to provide, in whole or in part, a service,” and (b) whether siting on EFU land is necessary after considering reasonable non-EFU alternatives and the six statutory factors (further detailed below). Courts have held that ORS 215.275 codifies this alternatives-based test and prohibits importing broader farmland-policy balancing into the necessity analysis.

For these reasons, further detailed below, the Hearings Officer’s interpretation in the Order is inconsistent with applicable Oregon statutes and caselaw interpreting the same.

**1. Oregon Courts interpret “utility facility” broadly to include any equipment or apparatus that functions to perform a service**

Although the term “utility facility” is not defined in Oregon state statute or rule, Oregon courts interpret the statutory phrase to encompass a broad, general category of utility facilities that function or perform or provide a public utility service need including the delivery or furnishing of electricity. *See Keicher*, 175 Or App 633; *Cox*, 174 Or App at 343–44. The definition specifically contemplates off-site equipment as long as some equipment or apparatus performs the relevant service, including transmission, delivery, furnishing or other “similar function or service.” BESS fit within this broad definition, and the Hearings Officer’s decision ignores this well-established precedent.

The Oregon Court of Appeals in *Cox* broadly described “utility facilities” as follows:

“[U]tility facility,” as used in ORS 215.283(1)(d), [] mean[s] *equipment or apparatus*, whether standing alone or as part of a structure, *that functions to perform or provide, in*

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<sup>49</sup> Order at 10 ¶ 7.

<sup>50</sup> Order at 10 ¶ 11.

<sup>51</sup> Order at 11 ¶ 14.

*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. See, e.g., ORS 215.283(1)(L) (referring to the “placement of utility facilities overhead and in the subsurface of public roads and highways”). However, at a minimum, the facility must include some equipment or apparatus that itself performs the relevant production, transmission or similar function or service.”* 174 Or App at 343–44.

Stated another way, “a project or site in which equipment or apparatus that is present...performs the critical functions that constitute a service at issue” are utility facilities within the meaning of ORS 215.283(1).

Oregon courts and LUBA have acknowledged a broad range of facilities that qualify as “utility facilities,” for example:

- Cell towers, owned by private companies, are still utility facilities. *McCaw Communications v. Marion County*, 96 Or App 552, 773 P2d 779 (1989) and *Sprint PCS*, 186 Or App at 475 (cellular communication facilities provide a “...a public service...” and thus are an eligible “utility facility”).
- Radio transmission towers are “utility facilities necessary for public service.” *Meland v. Deschutes County*, LUBA No. 83-086 (Jan. 25, 1984) (Final Order) (citing 41 Op Atty Gen 77, 81 (1981) which found the same as radio towers “supply the public with a commodity or service of public consequence or need”).
- A 12-mile transmission line which transmitted energy from a single wind turbine electrical generator to the grid (as opposed to serving multiple generators) qualified as a “utility facility.” *WKN Chopin, LLC v. Umatilla County*, LUBA No. 2012-016 (July 11, 2012) (Final Order).

We are not aware of any case that has required the owner or operator of a “utility facility” to be a regulated public utility providing a service directly to customers. ORS 215.283(1) specifically does not use the term “public utility” or “regulated public utility.” It instead states “utility facility necessary for public service,” clearly indicating that the use category is not limited to publicly owned and regulated enterprises.<sup>52</sup> See *McLaughlin v. Douglas County*, LUBA No. 2014-049, Final Opinion and Order at 12-13 (Nov. 12, 2014) (finding a Pacific Gas Connector Pipeline, LP natural gas pipeline did not need to provide service directly to local or even county residents to qualify as a “utility facility necessary for public service.”)

## **2. Legislative history supports an inclusive reading**

This interpretation is consistent with available legislative history. No evidence indicates the Legislature intended “utility facilities necessary for public service” to exclude technology like a

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<sup>52</sup> 42 Or. Op. Atty. Gen. 77 (1981), 1981 WL 152267.

BESS. “Utility facilities necessary for public service” have been permitted as nonfarm uses in farm zones since the original bill’s inception in 1963.

The first provisions that allowed for the establishment of nonfarm uses within farm zones were provided for in ORS 215.213 (enacted pursuant to Senate Bill (“SB”) 129 and HB 1230).<sup>53</sup> ORS 215.283(1)(d) was later adopted verbatim in 1983, specifically applying to nonmarginal county lands. ORS 215.213(1) and ORS 215.283(1) are identical.

In enacting ORS 215.213, and in discussing why “utility facilities” were included in the bill, the legislature left the list open-ended. Testimony at the committee hearing explained that the utility facility language was intended to capture “*such things as power substations or transformer substations and so on,*” which sometimes were sited in rural areas. *See* House Committee on Local Government Hearing, May 28, 1963, Audio Recording of Hearing at 51:25.<sup>54</sup> The LCDC agreed at its July 20, 2001, public hearing regarding implementation of ORS 215.275 through administrative rule under OAR 660-033-0130(16). LCDC explained: “utility facility...has been in the statute since 1963 and is intended to cover *a wide range of utility things*, such as cell towers, sewer lines, [and] booster stations.”<sup>55</sup>

Further, in discussing the legislative history of ORS 215.283(1) specifically, the Oregon Supreme Court took judicial notice of the interpretation provided by the Energy Facility Siting Council’s Assistant Attorney General stating:

When those statutes were first adopted, there were five categories of non-farm use that were allowed on farm land. One of those five categories was utility facilities necessary for public service. So, at the very outset in the farm use laws of Oregon we had this provision allowing utility facilities on farm land[.] Then, about 10 years later, the legislature amended—made the first of many subsequent amendments to those statutes, and \* \* \* one of the things they did was divide up the utility facility category [and] create[ ] two subcategories. One was for power plants, they made that a conditional use[.] \* \* \* We believe what that history shows is general [legislative] intent \* \* \* to use [ORS] 215.283(1)(d) as what I would call *a general category for utility facilities*, and then they’ve created a number of specific subcategories for particular types of utility facilities.”

*Save Our Rural Oregon v. Energy Facility Siting Council*, 339 Or 353, 384, 121 P3d 1141 (2005) (emphasis added).

The BESS Project is the type of facility contemplated by the foregoing cases. Not only do the BESS equipment and facilities function to perform the service of storage, delivery and furnishing of electricity, but as described in detail in Section II.A above, BESS are a critical element of the state’s energy infrastructure. The Oregon Legislature, ODOE, and electric utilities alike have acknowledged BESS are an essential part of achieving Oregon’s clean energy goals and

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<sup>53</sup> Exhibit 29 – Second House Amendment to Senate Bill 129 by Unanimous Consent (May 28, 1963) (emphasis added).

<sup>54</sup> We are prepared to provide the audio recording upon request.

<sup>55</sup> Exhibit 30 at 5 (Statement of Ron Eber, LCDC Rural Lands Specialist at the time, responding to questions from Commissioner McRobert).

mandates. BESS supply the public with a necessary electrical storage and delivery service that is integral to the larger grid, and here to the PacifiCorp grid, the Parrish Gap substation (as the POI) and related transmission (both indisputably utility facilities). The BESS Project would provide 199 MW of 4-hour duration storage, which PacifiCorp and the state of Oregon have both stated on numerous occasions is necessary for future electricity use, grid reliability, and to meet ambitious state clean energy goals.<sup>56</sup> *Supra* Section II.A. These are critical public utility service functions.

In sum, the Hearings Officer's decision of denial is inconsistent with such appellate rulings. BESS provide necessary energy storage service by receiving and furnishing electricity based on the demands of the utility and larger grid.

### **C. The BESS Project Satisfies the ORS 215.275 Siting Criteria**

Once it is established that a facility is a "utility facility," which it has, the question becomes whether it is necessary to site that facility on EFU land. The Legislature provided the sole framework for making this determination in ORS 215.275, as described in Section IV.A above, and the County must use this framework to evaluate the BESS Project. When determining whether it is necessary to site a public utility facility on EFU land, local governments must analyze any non-EFU alternatives based solely on ORS 215.275. They may not import additional policy considerations into their analysis. *Sprint PCS*, 186 Or App at 476.

This Section IV.C. describes the characteristics of an alternatives analysis, shows how the Hearings Officer misapplied ORS 215.275(2), and shows why the BESS Project does satisfy one or more of the factors ORS 215.275.

#### **1. The scope of the alternatives analysis is defined by the Applicant's business objectives that advance the goal of providing service – the Hearings Officer erred in not considering them**

While non-EFU alternative sites must be considered, Oregon courts and LUBA have imposed constraints on the scope of alternatives that must be considered. *See Sprint PCS*, 186 Or App 470.

Key constraints include the following:

- Only sites outside of EFU land must be considered. *Id.* at 479 ("reasonable alternatives" refers to reasonable alternative sites to EFU land").
- Costs of a project on an alternative site may be considered, but not land costs, and costs cannot be the only factor. *Id.*

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<sup>56</sup> 41 Op Atty Gen 77, 81 (1981), 1981 WL 15226 (Aug. 19, 1981) (A use is a "utility facility" under ORS 215.213(d) (currently codified as 215.213(c)) if it supplies the public with a commodity or service of public consequence or need and is so impressed with a public interest that it comes within the field of public regulation, and "as such is a public utility within the broad meaning of the term.")

- The applicant’s reasonable business objectives that advance the goal of providing utility service define the scope of the alternatives to be considered. *Id.*

Here, the Applicant showed that the business need is to provide BESS to PacifiCorp substation, and it provided a detailed alternatives analysis showing the sites considered and why no other non-EFU zoned property was reasonable for the project.<sup>57</sup> Remington’s Alternatives Analysis (Appendix A) describes its key business objectives and identifies specific siting criteria that flow from those objectives, guiding how BESS sites are evaluated. For example, key objectives include connecting to a PacifiCorp-owned substation in the Willamette Valley Service Area with 115 kV of available transfer capacity. *See Supra* Section II.C; Appendix A.

Friends of Marion County (“FOMC”), the County and subsequently the Hearings Officer, made much of the map submitted by FOMC of PGE substations, arguing that it shows that the BESS Project could have been located outside of EFU zones. But a core business objective of the BESS Project, and one that is essential to providing utility service, is that the BESS be sited adjacent to a *PacifiCorp substation* to address the utility needs of PacifiCorp. Put simply, PGE substations are irrelevant to this application (for reasons also detailed in Section IV.C.3). Taking FOMC’s assertion (and the Hearings Officer’s) to its logical conclusion would mean so long as one utility had a substation outside of EFU land with capacity for a BESS, then no other utility could have battery storage next to a substation in EFU. This is an illogical outcome that stems from an erroneous application of the alternatives analysis.

The Hearings Officer made the same mistake, and failed to consider Remington’s analysis and actual basis for its business needs that advances the objectives of providing the utility service. This is inconsistent with Oregon law, including *Sprint PCS v. Washington County*, 186 Or App 470, 481, 63 P3d 1261 (2003). The Order does not even address *Sprint*. And, contrary to *Sprint*, the Order rejects the Applicant’s “decision about its service needs,” which under *Sprint* are to be considered and respected, and that “a site that does not meet those [service] needs is not a reasonable alternative” when those decisions advance the goal of providing service. Here, a key siting criterion for the BESS Project is the ability to connect to a PacifiCorp substation in order to provide battery storage to PacifiCorp. PGE substations are irrelevant to the analysis.<sup>58</sup>

**2. The Hearings Officer misapplied ORS 215.275(2), incorrectly treating the factors as mandatory criteria that each must be satisfied**

The Hearings Officer’s decision 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),<sup>59</sup> by evaluating each *factor* as mandatory review criteria. Remington applied under factors (a), (b), and (c) under ORS 215.275, yet the Order analyzed the BESS Project under all six factors, including (d), (e), and (f). Further, the Order conflates the public health and safety factor, and analyzes this factor as if it requires an affirmative showing from Applicant, rather than this being an optional factor (which Applicant is not applying under). The Order also unlawfully analyzes the health and safety factor within the locational dependence factor.

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<sup>57</sup> See Appendix A.

<sup>58</sup> Order at 13-14.

<sup>59</sup> Also found at MCC 17.136.040(I).

**3. Remington meets three of the factors to demonstrate necessity under ORS 215.275(2), despite only needing to show one**

ORS 215.275(2) sets out what an applicant must prove in order to demonstrate that a utility facility is necessary. An applicant must 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 [six] factors.*” ORS 215.275(2) (emphasis added). Textually, the factors set out in ORS 215.275(2) serve to define the focus of the applicant’s “consideration” of non-EFU alternatives “necessary” to reject reasonable alternatives. *Sprint PCS*, 186 Or App at 476.

Here, the record demonstrates that Remington considered reasonable non-EFU alternatives to the current location and the use of EFU lands, however, at least three of the statutory factors nevertheless required it to locate the facility in an EFU zone. *See* Appendix A.

**a. Technical and engineering feasibility**

The BESS Project must be located in the current location due to technical and engineering feasibility considerations. The Hearings Officer’s opposite conclusion on this factor is factually incorrect, ignores substantial evidence in the record demonstrating the technical and engineering constraints making the Remington site adjacent to the Parrish Gap Substation the only feasible location for the BESS Project, and misapplies the law by adding an additional requirement not found in statute or Oregon case law. *Brentmar*, 321 Or at 496.

Under *Brentmar*, the County is only authorized to apply the statutory provisions set forth in ORS 215.275 and cannot add additional local criteria. Yet, the Hearings Officer did so in requiring Remington demonstrate interconnection to the grid is “technically impossible from non-EFU land.”<sup>60</sup> This is not the test and is not relevant here. Remington provided substantial evidence that “reasonable alternatives” were thoroughly considered but that the BESS Project must be sited in the present location due to technical and engineering feasibility considerations. *See* Remington’s Hearings Officer Prehearing Brief; Appendix A at 5–8.

Siting BESS projects involve numerous technical and engineering considerations, the most important of which here is the proximity to a substation with available capacity to interconnect to the grid within the proposed service area. Remington’s 15-page technical analysis demonstrates the BESS must be located within one mile of the Parrish Gap substation in order to provide the BESS service to PacifiCorp within the Willamette Valley Service Area. *See* Appendix A at 5–8.

The BESS Project must be sited within one mile to account for various crossing agreements, procurement lead times for project infrastructure like utility poles, and power loss in transmission lines as power from BESS must be able to travel in and out of the facility. Appendix A at 3–4. The BESS Project substation also must have “available transfer capacity” of 115kV or higher to accept the BESS Project’s power with feasible network upgrades that can be implemented within the PacifiCorp’s required timeframe (here by 2029). Appendix A at 4. The Hearings Officer’s decision ignores this.

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<sup>60</sup> Order at 12.

Based on these technical and engineering considerations, the Remington site adjacent to the Parrish Gap Substation is the only feasible location that could accommodate these criteria and meet PacifiCorp's timing requirements. Appendix A at 4–8.

In sum, the Hearings Officer did not address this technical evidence and instead copied significant portions of the Planning Director's underlying permit denial (the subject of the appeal) and pasted it into the Order despite the substantial additional supporting evidence Remington provided.

### **b. Locationally dependent**

The BESS is locationally dependent. And the Hearings Officer's opposite conclusion is factually incorrect and in error for two main reasons. First, it ignores substantial evidence in the record, for example, by finding that "Applicant did not provide any evidence to support the assertion that they examined other locations in the county for compatibility with the project."<sup>61</sup> This is false. Applicant provided a 15-page alternatives analysis, detailing all of the sites considered and why they are not reasonable alternatives to the proposed site.

Second, by improperly importing health and safety considerations into the locational analysis.<sup>62</sup> Per state law, OAR 660-033-0130(16), 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. (emphasis added). Safety and health considerations are not relevant and in direct conflict with *Brentmar*. *Brentmar*, 321 Or at 496.

Here, Remington provided substantial evidence that unique geographical needs of the project cannot be satisfied in other locations. Similar to above, no other sites could accommodate a minimum of fifteen contiguous acres of land within one mile of a substation within PacifiCorp's transmission system in the Willamette Valley Service Area with available capacity of 115kV or higher. As described above, the BESS is not standalone and must be sited within 1 mile of a substation with available transfer capacity in order to allow for the requisite energy to flow back and forth to support that substation. *See* Section II.C-D.

Further, PacifiCorp's transmission system in the Willamette Valley is non-contiguous with its system in Washington and Central Oregon. It is connected only by transmission lines owned by other utilities. To store energy located within the Willamette Valley Service Area, the BESS Project must be located within this same area. Locating storage outside of this area would trigger "wheeling" charges (charges for transferring, or "wheeling," electricity through lines owned by other utilities such as PGE or Bonneville Power Administration), as well as increase the transmission line loss, which is the loss of electricity from the system as it is carried over long distances.

Similar to above, regarding the technical and feasibility analysis, the Hearings Officer did not address any of this locational evidence and instead copied significant portions of the Planning

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<sup>61</sup> Order at 13.

<sup>62</sup> *Id.*

Director's underlying permit denial and pasted it into the Order despite the substantial additional supporting evidence Remington provided.<sup>63</sup>

**c. Lack of available urban and non-resource lands**

As detailed in Appendix A, no urban or non-resource lands are available that meet the project objectives and siting criteria.

The Hearings Officer's rejection of this evidence to find that the "Applicant's position reflects a project preference and business strategy, not showing locational necessity" is in error and inconsistent with state law, including *Sprint PCS v. Washington County*, 186 Or App 470, 478-481, 63 P3d 1261 (2003).

Under *Sprint*, defined project objectives, decisions regarding methodologies of providing service, and complex technological decisions to do the same are to be respected where advancing the statutory goal of providing the utility service, such as here. *Sprint*, 186 Or App at 481 ("decision about [] service needs should be respected and that a site that does not meet those needs is not a reasonable alternative.").

Here, Remington provided substantial evidence that in order to meet project objectives and siting criteria to provide battery energy storage services to the PacifiCorp electrical grid in PacifiCorp's Willamette Valley Service Area, proximity to the Parrish Gap substation is necessary. FOMC's map of alternative PGE substations are not relevant to this analysis, and the Hearings Officer erred in relying on them.

**4. The Hearings Officer conflated the public health and safety factor, but the BESS Project is not using that factor**

"Public health and safety" is another one of the six factors under ORS 215.275(2) that can allow a utility facility necessary for public service be sited in an EFU zone. This factor speaks to uses that come with significant risk such that they should not be located in more populated, urban areas. However, Remington does not argue that the BESS Project needs to be sited on EFU lands for public health and safety reasons. Instead, as outlined above, Remington relies on the technical, engineering and locational factors to support the finding that the BESS Project needs to be sited in EFU here.

Still, similar and almost verbatim to the Planning Director's Decision, much of the Hearings Officer's Order focuses on speculative reasons for why the BESS Project is dangerous or harmful, and therefore should not be allowed in EFU.<sup>64</sup>

In both cases, the Hearings Officer misconstrues and misapplies this factor. Contrary to the Hearing Examiner's assertion that "no single factor is dispositive" and "public safety may be considered to the extent it is a siting factor,"<sup>65</sup> ORS 215.275 does not require any showing regarding potential public health or safety risks and those considerations are not relevant to the

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<sup>63</sup> *Id.*

<sup>64</sup> See Order at 15-16; Planning Director Denial at 5.

<sup>65</sup> Order at 15.

ORS 215.275 inquiry. The relevant portion of ORS 215.275(2) specifically states “[t]o demonstrate that a utility facility is necessary, an applicant...must 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 [enumerated] factors*. (Emphasis added). One, not all must be met, and Remington showed at least three of the statutory factors were met, requiring it to locate the facility in an EFU zone.<sup>66</sup> The Hearings Officer is not permitted (nor is the County) to import such unsubstantiated considerations into its review.<sup>67</sup>

And even if it could (which it cannot), the allegations are unsupported. Remington presented testimony at hearing that BESS systems are designed to national standards with little fire risk, and mitigation is in place in the event those systems fail.<sup>68</sup> BESS are designed in accordance with the national, state and local code standards, and are equipped with emergency response plans in place for the unlikely event of fire.<sup>69</sup> Further, the applicable fire district here, Turner Fire District, commented on the BESS Project, but the comments did not oppose the BESS Project. It instead listed Oregon Fire Code provisions that the BESS Project will need to comply with.<sup>70</sup>

The Hearings Officer did not address this and instead concluded that “fire risk supports denial.” This is in error, factually incorrect, and based on unsubstantiated claims related to limited fire response infrastructure and the complicating presence of agricultural operations.<sup>71</sup> On the contrary, the owner of the 300 contiguous acres of farmland adjacent to the BESS Project submitted a letter in support of the BESS Project at hearing and confirmed the absence of any agricultural conflicts, including fire threats.<sup>72</sup>

The Hearings Officer’s Order on this factor lacks substantial evidence and is in error.

##### **5. Remington properly considered costs as one of many factors in siting the BESS Project**

In supporting an alternatives analysis, costs related to non-EFU sites may be considered, they just cannot be the only consideration. ORS 215.275(3); OAR 660-033-0130(16)(a)(B). Contrary to the Hearings Officer’s determination, cost was not the sole deciding factor in selecting the location for the BESS Project.<sup>73</sup> Applicant provided extensive analysis of the other applicable factors.

As described above, at hearing, and throughout Appendix A, the BESS Project objectives and siting criteria were crucial to the site selection, and cost of potential network upgrades to

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<sup>66</sup> See Appendix A; Section IV.C. of this brief.

<sup>67</sup> *Brentmar*, 321 Or. at 496.

<sup>68</sup> See Exhibit 23 – Testimony of Cristina Gispert, Hearing Transcript at 11-14.

<sup>69</sup> See Exhibit 12(b) at 10-11, Section 2.4 (Safety).

<sup>70</sup> See Fire Marshal Comments Letter for Administrative Review 25015, submitted to the County via email July 24, 2025.

<sup>71</sup> Order at 16.

<sup>72</sup> See Hearing Exhibit 1 – Letter from Neils Paul Jensen Trustee of the Irma Jensen Irrevocable Trust to Marion County Planning Division, Re: Support for Remington Battery Energy Storage System (Administrative Review No. 25-015) submitted at the November 6, 2025 hearing.

<sup>73</sup> Order at 17.

alternative sites was one of many factors considered.<sup>74</sup> Not to mention, such considerations are a valid part of the reasonable alternatives analysis under applicable Oregon law. *See Sprint*, 6, 186 Or App at 479 (stating ORS 215.275(3) demonstrates that the obligation to consider reasonable alternative sites may include an obligation to consider costs and different designs to adapt a chosen utility methodology).

**D. The County’s Authority is Limited to Applying ORS 215.275, so the Farm Impacts Test Does Not Apply**

In addition to the errors described above, the Hearings Officer improperly applied MCC 17.136.060(A)(1) (the “farm impacts test”). That test does not apply here, and the Hearings Officer (and the County) is precluded from considering standards, criteria or such policies external to ORS 215.275.

The farm impacts test requires a showing that “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.” *Id.* This code section is derived from ORS 215.296. But ORS 215.296 only applies to uses allowed under ORS 215.213(2) or ORS 215.283(4). Neither are at issue here. A “utility facility necessary for public service” is allowed as of right under ORS 215.283(1). Therefore, the statutory criteria under ORS 215.296 simply does not apply. The Hearings Officer is prohibited from expanding applicability of the criteria under ORS 215.296 beyond subsection (2). *See Brentmar*, 321 Or 481. As detailed by the Court in *Brentmar*, uses delineated in ORS 215.213(1) or ORS 215.283(1) are uses “as of right,” which are not subject to additional local criteria. And, in such cases of direct conflict with a statute, the code is invalid and statute controls. *See Hanson*, LUBA No. 2024-065.

But, even if the farm impacts test did apply (which it does not), the BESS Project does not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, nor would it significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. The Hearings Officer’s decision is factually incorrect by stating that the Applicant “did not provide any information about how the BESS might impact surrounding agricultural activities.”<sup>75</sup> Remington addressed this at hearing, and the adjacent landowner responded in a letter in support of the BESS Project confirming no agricultural conflicts.<sup>76</sup>

The Hearings Officer instead notes that SWCD raised concerns regarding impacts on water rights.<sup>77</sup> These concerns were addressed by Remington in its response to SWCD’s Comments which proposed a set of legally supportable conditions the County could adopt to address the SWCD’s concerns in compliance with ORS 215.275.<sup>78</sup> Remington’s Response also detailed that the evidence in the record indicates SWCD delivers irrigation water to over 17,000 acres for agricultural and other non-agricultural uses via 106 miles of canals and ditches.<sup>79</sup> And that under

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<sup>74</sup> See Appendix A at 3-8.

<sup>75</sup> Order at 19.

<sup>76</sup> Hearing Exhibit 1.

<sup>77</sup> See Exhibit 25.

<sup>78</sup> See Exhibit 26.

<sup>79</sup> See *Id.*, Exhibit B to Remington’s Response to SWCD.

those circumstances, the removal of 15 acres of irrigated land to accommodate the BESS Project cannot be found to have a “significant impact” on the SWCD’s ability to continue to provide such services, 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 SWCD’s testimony.

To the contrary, the “surrounding lands” in this instance are largely confined to Mr. Jensen’s adjacent acreage in agricultural production.<sup>80</sup> For these reasons, Remington respectfully submitted that the record was devoid of substantial evidence to support a finding that mitigation of significant project impacts on surrounding agricultural lands would be required.

The Hearings Officer ignores this evidence in the record.

### **E. The Ordinance Banning BESS is Invalid as to EFU Land and Does Not Apply**

The Hearings Officer correctly does not apply the Ordinance banning BESS to this application (AR 25-015), which was the main basis of the Planning Director’s original denial and conclusion that BESS are not utility facilities and are not allowed in any County zone.

However, it is worth reiterating here that the Ordinance is unlawful and void on its face as applied to EFU land in the County. It is well established under Oregon law 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*, LUBA No. 2024-065 (citing *Riggs*, 167 Or App at 9-10) (“Although counties adopt their own EFU zones, the EFU zone is a creature of statute. In cases where a county’s EFU zone deviates from the statutory EFU zone in ways that conflict with the statute, the statute controls.”). Therefore, in this context, local law implements state law, and no deference is afforded to the County’s interpretation. *Id.* None should be afforded here.

Here, the Board’s ban of BESS as authorized utility facilities on EFU lands under the Ordinance conflicts with the plain language set forth in ORS 215.283(1) and 215.275 and related appellate rulings. The County is not authorized to impose additional local criteria beyond the statute. *Brentmar*, 321 Or at 483. This is all the more true when applied to a utility facility that meets one or more of the factors set out in ORS 215.275. The County’s actions as to EFU lands are void.

Therefore, the Ordinance simply cannot apply to the review and final action on AR 25-015.

## **V. CONCLUSION**

The BESS Project is a utility facility that is necessary for public service. Remington demonstrated that the BESS Project must be sited in the EFU zone at the proposed location based on consideration of reasonable alternatives and the factors set forth in ORS 215.275. The Hearings Officer’s decision to deny the application misconstrued the law and the Hearings

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<sup>80</sup> *See Id.*, Exhibit A to Remington’s Response to SWCD.

Officer's findings are unsupported by substantial evidence. The denial should be reversed, and AR 25-015 should be approved on appeal.

DATED: March 12, 2025

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