

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

In the Matter of the	)	Administrative Review
Application of:	)	Case No. 25-015
Remington BESS, LLC.	)	

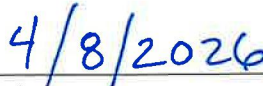
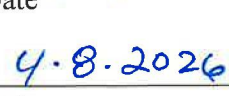
ORDER 26-051

This matter comes before the Marion County Board of Commissioners ("Board") on the Application of Remington BESS, LLC, on behalf of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust 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 in the Exclusive Farm Use zone in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100).

The Marion County Planning Director issued a decision of denial on August 1, 2025. The decision was appealed to the Hearings Officer. The Marion County Hearings Officer held a duly noticed public hearing on November 6, 2025, and on January 21, 2026, issued a decision denying the application. Official notice was taken of the Planning Division file and the Hearings Officer's decision. The Hearings Officer decision was appealed to the Board on February 4, 2026. The Board held a public hearing to consider the appeal, application, and findings on March 18, 2026. The Board closed the public hearing the same day. A motion to deny the appeal was made and passed the same day. The Board has considered all the evidence in the record, all arguments of the parties and is otherwise fully advised in the premises. After careful consideration of all facts and evidence in the record, the Board upholds the denial of this application, and adopts its own Findings of Fact.

IT IS HEREBY ORDERED that the Board adopts the findings contained in Exhibit A, and **DENYS** the application for an administrative review to place a Battery Energy Storage System.

MARION COUNTY BOARD OF COMMISSIONERS:

	
Chair	Date
	
Commissioner	Date
Recused	
Commissioner	Date

JUDICIAL NOTICE

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

I. Findings of Fact and Conclusions of Law

The Board of Commissioners, after careful consideration of the testimony and evidence in the record, issues the following findings regarding Administrative Review 25-015.

1. No objections were raised to notice, jurisdiction, bias, *ex parte* contacts, conflict of interest, or to evidence or testimony by any party during the public hearing before the Board or otherwise during the appeal.
2. Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust applied 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 in the Exclusive Farm Use (EFU) zone 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).
3. 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.
4. 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.

5. 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.

6. Applicant proposes to place a battery energy storage system (BESS) on a 15-acre area of the subject parcel to store electricity.
7. 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.
8. 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.

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.

II. 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 of the following claims: (1) that 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 be attached to PacifiCorp’s electrical grid to provide battery energy storage services. The evidence suggests that BESS may be beneficial to 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 PacifiCorp’s electrical 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 Hearings Officer determined that BESS is not a utility facility necessary for public service. Additionally, if a BESS were a utility facility necessary for public service, the application does not satisfy the applicable Marion County Code Provisions in 17.136.040(I) that implement ORS 215.275.

The general proposal may be reasonable, but it cannot be approved because (1) it is not allowed by currently applicable law and code and (2) there is insufficient evidence in the record to support approval at this time.

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

III. Additional Findings of Fact

1. 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 while the County considers new code provisions implementing comprehensive BESS approval criteria. 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.

2. 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.
3. 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 charge batteries with electricity, store that energy, and then deliver electricity back onto 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.

4. Applicant states that Battery Energy Storage Systems (BESS) are a necessary and essential part of Oregon's energy infrastructure and future. Applicant references Oregon House Bill 2021 which sets renewable energy targets including elimination of greenhouse gas emissions associated with serving Oregon retail electricity consumers by 2040. To meet such targets, the Oregon legislature and the Oregon Department of Energy promote the integration and development of renewable energy production and BESS. House Bill 2021 requires electric utilities to develop clean energy plans concurrent with their integrated resource planning. PacifiCorp has complied and 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)
5. Applicant states that PacifiCorp's 2025 Integrated Resource Plan (IRP) indicated a need for BESS. PacifiCorp's 2025 Oregon Situs Request for Proposals (RFP) is the means by which PacifiCorp may procure resources described in the IRP. The 2025 RFP specifically calls for at least 509 megawatts of new 4-hour lithium-ion battery storage resources in PacifiCorp's Oregon service territory by the end of 2029. Applicant states that their BESS Project is designed to respond to PacifiCorp's request by providing 199 megawatts of 4-hour duration storage and by coming online before December 2029. (Applicant's Brief, Exhibits 12-17, Appendix A).
6. 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 (while the County considers new code provisions implementing comprehensive BESS approval criteria), does not apply to the current application. The Board agrees, and furthermore Staff and the Hearings Officer agree and explicitly stated in their respective decisions that Ordinance 1480 does not apply to this application. Applicant argues that the Ordinance is void because it conflicts with their interpretation of the plain language set forth in ORS 215.283(1). The Board does not agree with this assertion and finds that it is unsubstantiated and irrelevant to this decision. 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. The County has reiterated the inapplicability of Ordinance 1480 upon this application at every step.

At Marion County Board Session on July 9, 2025, Cristina Gispert, an employee of RWE (Rheinisch-Westfälische Elektrizitätswerk) parent company of Remington BESS, LLC., gave public comment in opposition to Ordinance 1480. The public hearing for Ordinance 1480 had been previously held on June 11, 2025. Ordinance 1480 was on the agenda for adoption that day, July 9, 2025. During staff presentation of the agenda item for Adoption of Ordinance 1480, Planning Director Brandon Reich stated that Ordinance 1480 would not retroactively affect the RWE permit that was submitted June 30, 2025, nor would it affect the BESS that was applied for by Clean Energy Mission subsidiary Swift Energy Center, LLC. on behalf of Lewis Land LLC and approved by staff on June 18, 2024 prior to the Board determination and direction that BESS are not utility facilities necessary for public service.

The applicant's argument that Ordinance 1480 conflicts with ORS 215.283(1) is unsubstantiated and irrelevant to the present application. The plain language set forth in ORS 215.283(1) does not include energy storage of any kind. Instead, ORS 215.283(1)(a) references and defines "Utility facilities necessary for public service." The plain language set forth in ORS 215.283(1)(a) includes "Utility facilities as provided in ORS 215.275" and "associated transmission lines" as defined in ORS 215.274 and 469.300. Neither ORS 215.275, nor 215.274, nor 469.300 include energy storage. ORS 215.283(1)(u) also references "Utility facility service lines." The plain language of set forth in ORS 215.283(1) specifically excludes commercial facilities for the purpose of generating electric power for public use by sale. In contrast, ORS 215.283(2)(g), which governs "nonfarm uses [that] may be established, subject to the approval of the governing body," includes "Commercial utility facilities for the purpose of generating power for public use by sale." A BESS is not a utility facility necessary for public service, and the county has not yet decided whether it falls under ORS 215.283(2)(g), which is not at issue in this case. A BESS is neither a transmission line, nor a power generation facility. Again, BESS is not

explicitly included in ORS 215.283. Ordinance 1480 provides clarification of the inapplicability of MCC 17.136.040(I) to BESS. Such a clarifying ordinance is appropriate, prudent, and fully within the interpretive role of the Board when staff had previously approved such an administrative appeal without seeking direction from the Board. Appeal of an administrative review is not the correct apparatus for appeal of an ordinance, or spurious claims regarding the legality of an Ordinance and the authority of a County to adopt code provisions regarding uses which are not contemplated in state law. The applicant was present at Board Session on July 9, 2025 when a motion was made, seconded, and passed to adopt Ordinance 1480. The applicant did not appeal Ordinance 1480.

3. Ordinance 1480 added MCC 17.110.735 (and MCC 16.01.050 for Urban areas) 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 17.110.735 prohibits BESS in Marion County outside of Urban Growth Boundaries (UGB) and MCC 16.01.050 prohibits BESS within UGBs in Marion County on land not yet annexed into a city.
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 Board considers (1) whether a BESS is a utility facility under Marion County Code prior to Ordinance 1480; (2) whether a BESS is a utility facility that is permissible in the Exclusive Farm Use zone under ORS 215.283(1)(c); and (as a precaution and without waiving the County's position that a BESS is not a utility facility necessary for public service) (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 Board find that 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.” The Board finds that BESS is not a “related physical facility” as defined in MCC 17.110.584.
8. During the public hearing on March 18, 2026, the Board asked the applicant how BESS could or would benefit the public who served by the electrical grid, specifically how BESS could make electricity cheaper or more effectively transmitted. The applicant explained that a natural gas facility of equal megawattage would be substantially more expensive construct and operate. When questioned about the difference between power generation versus BESS, the applicant explained that the energy generated by any power source enters the grid and is then used to charge the batteries and then later injected back into the system on demand.

The Board then asked for more information about the proposed proximity to substations. The applicant explained that proximity to substations is beneficial because it lowers the cost of transmission lines and lowers the cost from energy lost during transmission. Later, during rebuttal, the applicant expanded upon the expense aspect of the proposed site and explained that the substation adjacent to the proposed site would require no upgrades, and that other substations contained in the alternatives analysis would require upgrades.

The Board empathized with the applicant and stated that the idea of siting a BESS near a substantial is a reasonable idea for the fiscal reasons explained by the applicant (which may allow approval once the County adopts its anticipated future ordinance on comprehensive BESS approval criteria), but that the current application is not an applicable permitting pathway under the code in effect prior to Ordinance 1480 that governs this application. A BESS is not a utility facility necessary for public service, and cost alone is not enough to determine that a utility facility must be sited on EFU zoned land.

The Board finds that the overwhelming evidence in the record provided by the applicant suggests that cost savings is the primary reason for the proposed BESS location. Even if BESS were a utility facility necessary for public service, potential cost savings alone does not make siting on EFU a necessity.

9. The Board reaffirms its determination that BESS is not a utility facility necessary for public service as defined in MCC 17.110.584.

ORS 215.283(1)(c)

10. 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.
11. 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.
12. 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.

13. Applicant 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 could support 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 set forth in ORS 215.283(1)(c).

14. 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.
15. 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 Board finds that 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)

16. 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 Board 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 would also need to 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). As a precaution and without waiving the County's position that the criteria in MCC 17.136.040(I) do not apply to a BESS because a BESS is not a utility facility necessary for public service, the Board considered the Applicant's responses to these criteria. The Board found that even if a BESS could be characterized as a "utility facility" as described in MCC

17.110.584, this proposal does not meet the required criteria and would still have to be denied.

ORS 215.275(1) requires 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.” The Applicant failed to introduce sufficient evidence to show that a BESS must be in the EFU zone in order to provide the services that a BESS provides. Therefore, it is unnecessary to evaluate the criteria in ORS 215.275(2). However, as a precautionary alternative, those criteria are evaluated below.

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

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).

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. *MCC 17.137.040(I)(1) and ORS 215.275(2)(a): 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 Board finds that 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 affirmative 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 admits the project carries a 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 Board finds the Applicant does not demonstrate the technical or engineering feasibility required to mitigate fire risk of the proposed BESS.

The Board maintains that the proposed BESS is not a utility facility necessary for public service, but if it was, the proposal is not required to be sited in an EFU zone at the proposed location due to the technical and engineering feasibility factor.

The Board also finds that the proposal would not satisfy the corresponding requirements of ORS 215.275(2)(a).

2. *MCC 17.137.040(I)(2) and ORS 215.275(2)(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;*

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 are not sufficient in acreage, 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 specific examples of these other substations which do not meet the technical and engineering feasibility.

Applicant 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 provided an alternatives analysis of some other Pacificorp substations in the area. The alternatives analysis narrowly examines whether this exact configuration of a 15-acre BESS could be established on non-EFU land within 1-mile of a substation within the contiguous Pacificorp service area that includes the proposed location. The applicant determined within this narrow scope that there is no non-EFU land where the BESS could be sited and therefore the BESS must be locationally dependent. The Board does not find the alternatives analysis persuasive or credible. The alternatives analysis does not consider any reasonable alternative configurations and ignores other potential alternatives. Finally, the Applicant is a separate company from PacificCorp. Therefore, while PacificCorp is willing to partner with Applicant to have the proposed BESS connect to their substation, this BESS does not have to be connected to only a PacificCorp substation. Technically, this BESS could be sited next to any companies' substation if they were willing to partner with Applicant. Accordingly, Applicant's alternatives analysis' exclusion of any substation not owned by PacificCorp is an unnecessary exclusion of possible alternatives. The Board does not find adequate information in the alternatives analysis to support the assertion that 15-acres or a mile radius of a Pacificcorp substation are requisite criteria for siting analysis.

The location proposed poses potential 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 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 to a specific substation, not a requirement that the facility occupy EFU land. The evidence on the record suggests the preference for proximity to a specific substation is relative to cost savings to the applicant and not public service. The Board finds no credible evidence in the record to support the Applicant's assertion that the facility must be sited on EFU zoned land in order to achieve a reasonably direct route, or to meet unique geographical needs that cannot be satisfied on other lands. Therefore, locational dependency under ORS 215.275 is not established.

Furthermore, there was evidence in the Applicant's own alternatives analysis appearing to show at least two other possible BESS sites that meet Applicant's chosen criteria and are not in EFU.

The Board maintains that the proposed BESS is not a utility facility necessary for public service, but if it was, the proposal is not required to be sited in an EFU zone at the proposed location due to the locationally dependent factor.

The Board also finds that the proposal would not satisfy the corresponding requirements of ORS 215.275(2)(b).

3. *MCC 17.137.040(I)(3) and ORS 215.275(2)(c): Lack of available urban and nonresource lands;*

Applicant's alternative analysis narrows potential sites based upon 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 connection to a substation for interconnection to the grid, but not the Parrish Gap Substation specifically. Furthermore, proximity to a substation reduces the cost of the private transmission lines required to buy power from the grid for storage in batteries and eventual sale back onto the grid. This proximity is a function of financial practicality, not functional necessity. ORS 215.275(3) provides that "Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service."

The map of substations submitted by FOMC shows that there are many substations in Marion County on urban and non-resource lands. The Board finds this evidence on the record credible and persuasive there is no lack of available urban and non-resource lands that led to the Applicant's proposed site for the Project.

Applicant did not initially provide information to suggest that other potential siting locations on urban or non-resource lands were considered for the proposed BESS. An analysis was submitted after the appeal of other potential sites to connect to a PacifiCorp substation in Marion County. The applicant argued that other sites on the PacifiCorp grid in Oregon were not available because of transmission costs across other utilities transmission lines would be charged to transfer power from one PacifiCorp service region to another. Again, ORS 215.275(3) clarifies that that cost alone may not be the only consideration.

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. The Board does not find the evidence provided either credible or persuasive that the proposed location is the result of a lack of available urban and non-resource lands.

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 non-resource 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.

The Board finds that the Applicant's reliance on adjacency to a specific PacifiCorp substation demonstrates a preference for proximity, not a requirement that the facility be sited on EFU land. Although such a preference may be reasonable, the Board finds that the Applicant has 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. The Board finds that there is insufficient evidence in the record to support the Applicant's position that there is a lack of available urban and non-resource lands upon which a BESS could be sited.

The Board maintains that the proposed BESS is not a utility facility necessary for public service, but if it was, the proposal is not required to be sited in an EFU zone at the proposed location due to the lack of urban or non-resource lands factor.

The Board also finds that the proposal would not satisfy the corresponding requirements of ORS 215.275(2)(c).

4. *MCC 17.137.040(I)(4) and ORS 215.275(2)(d): 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 Board maintains that the proposed BESS is not a utility facility necessary for public service, but if it was, this factor would not apply.

5. *MCC 17.137.040(I)(5) and ORS 215.275(2)(e): 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 run off 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 sufficiently 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.

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 may 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.

The Board maintains that the proposed BESS is not a utility facility necessary for public service, but if it was, the proposal is not required to be sited in an EFU zone at the proposed location due to the public health and safety factor.

The Board also finds that the proposal would not satisfy the corresponding factor in ORS 215.275(2)(e).

6. MCC 17.137.040(I)(6) and ORS 215.275(2)(f): Other requirements of state and federal agencies.

The Applicant did not provide evidence that requirements of state and federal agencies was a reason for selecting the proposed location.

The Board maintains that the proposed BESS is not a utility facility necessary for public service, but if it was, the proposal is not required to be sited in an EFU zone at the proposed location due to other requirements of state and federal agencies.

The Board also finds that the proposal would not satisfy the corresponding factor in ORS 215.275(2)(f).

a. MCC 17.137.040(I)(6)(a) and ORS 215.275(3): 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 evidence on the record suggests that cost is the primary deciding factor for proposing 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 Board maintains that the proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

The Board also finds that the proposal would not satisfy the corresponding factor in ORS 215.275(3).

- b. *MCC 17.137.040(I)(6)(b) and ORS 215.275(4): 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 Board maintains that the proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

The Board also finds that the proposal would not satisfy the corresponding factor in ORS 215.275(4).

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

MCC 17.136.040(I) implements the rules in OAR 660-33-0130(16) which generally mirror, and in some ways expand upon, the statutory requirements in in ORS 215.275. The applicant argues that this criterion, MCC 17.136.040(I)(6)(c), does not apply to their application. The Board maintains that none of MCC 17.136.040(I) applies to the application because a BESS is not a utility facility necessary for public service. However, these criteria are being considered as a precaution and the Board finds that the Applicant misunderstands how the farm impacts test is being referenced in this criterion.

OAR 660-33-0130(16)(a)(D) and ORS 215.275(5) state very similarly the following requirement for mitigating impact of a utility facility necessary for public service:

OAR 660-33-0130(16)(a)(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.

ORS 215.275(5) 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 (1)(c)(A) or 215.283 (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.

In other words, this rule directs the governing body of the county to impose clear and objective conditions on the application for a utility facility necessary for public service, conditions which would prevent significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland. In order to impose clear and objective conditions, the County must know for what impacts the conditions are required to mitigate. Marion County Code need not repeat this rule or statute verbatim to the applicant via county code, rather Marion County Code must implement the standard being imposed upon the county. In this case, to implement the standard the County requires the applicant to provide the same information generated when an applicant responds to the farm impacts test. This information will explain what if any farm impacts could or would result from approval of the application. With this information, the County can write clear and objective conditions to mitigate and minimize the impacts of the proposed facility.

The criterion does not necessarily require the applicant to *meet* the requirements of the farm impacts test, rather it states: “The applicant shall *address* the requirements of MCC 17.136.060(A)(1).” (*Emphasis added*) That requirement states:

MCC 17.136.060(A)(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 Board finds and affirms that the County would be unable to meet the standard imposed by OAR 660-33-0130(16)(a)(D) and ORS 215.275(5) without the information generated by addressing the farm impacts test in the way required by MCC 17.136.040(I)(6)(c). The applicant argues this criterion does not apply without providing any proposed alternative means of determining what clear and objective conditions the County need impose to mitigate and minimize the impacts of the proposed facility. The Board maintains that the criteria of MCC 17.136.040(I) do not apply in this case only because a BESS is not a utility facility necessary for public service. The Board further maintains that for any application of another use which could be defined as a utility facility necessary for public service, MCC 17.136.040(I)(6)(c) is a reasonable and logical criterion for application of OAR 660-33-0130(16)(a)(D) and ORS 215.275(5) that in no way expands upon the state criteria and is therefore wholly consistent with the findings in *Brentmar v. Jackson County*, 58 Or LUBA 416, 426–27 (2009).

The Hearings Officer provided an alternative reason for application the farm impacts test. 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 Board clarifies here that MCC 17.136.040(I)(6)(b) is not included as a means to approving an application under MCC 17.136.040(I) for a use that does not meet the definition in MCC 17.110.584. However, the criteria in MCC 17.136.040(I) are considered herein only precautionarily, without waiving the County's position that a BESS is not a utility facility necessary for public service. Similarly, it is prudent to precautionarily consider the farm impacts test without waiving the County's position that a BESS is also not a power generation facility or other use listed under MCC 17.136.050, or ORS 215.283(2) that could be approved as a conditional use subject to MCC 17.136.060. The Board finds this precautionary consideration, in addition to being required for discovery of factors requiring the mitigating conditions prescribed by ORS 215.275(5), relevant because BESS may be more similar to a commercial power generation facility than it is to a transmission line, and therefore more likely to eventually be designated under ORS 215.283(2), although the County has not yet made a decision on that. The applicant did not apply for this BESS under the claim of it being a power generation facility, and it is not necessary to expand upon the other criteria for that use type for which this proposal is not consistent with on its face; namely that the proposed site is on high value farmland, larger than 12-acres, and does not include a proposed exception to Goal 3.

The farm impacts test has been recently updated by the Department of Land Conservation and Development to accurately represent case law. Marion County is directly implementing the updated farm impacts test in the place of MCC 17.136.060(A)(1).

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 did not provide significant 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 a change in, or significantly increase the cost of, farm activities in the area. Although it may be possible for a project similar to the one proposed by the Applicant to get past the farm impacts test, the County

currently lacks the required information to determine what clear and objective conditions would be required to mitigate potential change in, or increased cost of, farm activities in the area as a result of the application being approved, if it were a utility facility necessary for public service. There is insufficient evidence in the record on this.

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. Santiam Water Control district explained that water rights are district wide and that the proposed location of the BESS would remove land from agricultural use which has an active water right. This removal of land from farm use would result in a net decrease in water that the District has available, unless that water right were transferred.

The Applicant stated during the hearing before the Board of Commissioners on March 18, 2025 that avoiding wetlands and water features was a consideration in selecting the proposed site. A mapped perennial stream runs through the proposed site, however the stream is no longer visible. The applicant provided no information about whether state or federal permits had been received to reroute the stream. The stream feeds into McKinney Creek, which is also mapped on the property, but outside the proposed project area. McKinney creek feeds into the Santiam Water Control District ditch.

Applicant correctly stated at the hearing that it would be inappropriate to condition approval on a water rights analysis. However, Applicant must address whether the Project will have an impact on surrounding lands in order for the County to apply conditions of a approval to mitigate and minimize the impacts of the facility.

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 (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 Board finds that 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. Miscellaneous

Applicants presented a summary of their objections to the County's determination in their appeal to the Board of Commissioners. The Board intended to, and believes it has, addressed each of those various objections in the above findings. As a precaution, the Board makes the abbreviated additional findings in an effort to be as thorough as it can be.

Applicant Objection Categories:

R1. Whether the county misapplied ORS 215.283(1)(c) and ORS 215.275

R2. Whether ORS 215.283(1)(c) and ORS 215.275 apply

R3. Alleging misapplication of ORS 215.283(1)(c)

a. Ownership of Utility Facility

b. Direct provision of service

c. Necessity of service "but for"

R4. Alleging misapplication of the alternative siting factors in ORS 215.275(2) and ORS 660-033-0130(16)

R5. Alleging failure to consider applicant's analysis and basis for business needs

- R6. Whether the county can rely on its own definition of Utility Facility
- R7. Whether the county considered the applicant's alternatives analysis
- R8. Whether the applicant adequately demonstrated that they satisfied one of more factors of ORS 215.275(2)
- R9. Alleging that the definition in MCC 17.110.584 is an unlawful means to determine whether BESS is a utility facility necessary for public service
- R10. Alleging that the county improperly applied the farm impacts test and simultaneously asserting that the applicant has met the farm impacts test

R1 - Whether the county misapplied ORS 215.283(1)(c) and ORS 215.275

The evidence in the record does not support the applicant's position that a BESS is a Utility Facility Necessary for Public Service under ORS 215.283(1)(c) and therefore ORS 215.275 does not apply.

R2 - Whether ORS 215.283(1)(c) and ORS 215.275 apply

The evidence in the record does not support the applicant's position that a BESS is a Utility Facility Necessary for Public Service under ORS 215.283(1)(c) and therefore ORS 215.275 does not apply.

R3. Alleging misapplication of ORS 215.283(1)(c)
a. Ownership of Utility Facility

The applicant alleges that the County misapplied the law and determined that the owner of a utility facility needs to be a regulated utility providing electrical service directly to customers. The applicant's interpretation is that the facility only need provide a service. The Board finds both of these assertions inaccurate. First, the county does not require a regulated utility to own a utility facility necessary for public service. The county requires a utility facility to be *necessary for public service* to be considered under MCC 17.136.040(I) or 215.283(1)(c). Necessary for public service may include supportive facilities, if they are necessary to the provision of the service. The BESS the applicant applied for is a privately owned facility that stores excess energy. BESS operate by charging batteries when there is excess energy, and discharging back to the grid during peak demand. BESS require transmission lines from the BESS to a point of interconnection with the grid, namely a substation. The closer a BESS is to a substation, the cheaper the cost to the BESS owner for extension of the transmission lines. The County's position is not to suggest that BESS are not beneficial to grid stability, but that evidence on the record does not show that they are necessary. Much like power generation, there is an economic incentive for private companies to establish BESS. The economic action of a BESS is essentially the buying and selling of energy. It is a use that is simultaneously commercial, industrial, and chemical. There are many types of commercial uses that are beneficial to utility providers, and they are not utility facilities

necessary for public service. The Board does not find persuasive or convincing the applicant's argument that the Hearings Officer Order misapplied the law and added new elements of the definition of "utility facility".

b. Direct provision of service

The applicant alleges that the County misapplied the law and 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 without it the service to the customer would be interrupted. This assertion is likely in response to discussion about how the service already exists and functions without the BESS. The Board clarifies here that it does not determine that a utility facility must either directly supply service to customers or that without it the service to the customer would be interrupted, but rather the applicant must provide a preponderance of evidence sufficient to meet the standard in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987). The Board has determined that BESS is not a utility facility necessary for public service, and the applicant has not provided a greater weight of evidence to contradict that determination. The Board does not find persuasive or convincing the applicant's argument that the Hearings Officer Order misapplied the law and determined that a utility facility necessary for public service is required to provide service directly to consumers.

c. Necessity of service "but for"

The applicant applied for a BESS as utility facility necessary for public service after the Board had already determined that BESS are not a utility facility necessary for public service. The applicant attempts to argue that determination with this application. The Board finds that the applicant has not met the burden of proof in a showing that a BESS is a utility facility necessary for public service. The County did not create a new definition of utility facility that requires a showing that "but for" the proposed facility electric service could not be provided, rather the Hearings Officer pointed out how there is no evidence on the record that BESS is necessary for the public service of electricity. The applicant has not provided sufficient evidence to suggest that BESS is necessary for public service. The Hearings Officer implied that if the applicant could show that "but for" a BESS energy could not be served to customers in the region proposed, that would be one way of showing necessity. The Hearings Officer never stated or implied that a "but for" showing was required. The Board does not find persuasive or convincing the applicant's argument that the Hearings Officer Order misapplied the law by creating a new definition of "utility facility".

R4. Alleging misapplication of the alternative siting factors in ORS 215.275(2) and ORS 660-033-0130(16)

The applicant alleges the Order is legally incorrect and inconsistent with applicable law by misapplying the alternative siting factors in ORS 215.275(2) and OAR 660-033-0130(16). The applicant states that they specifically applied under factors (a), (b), and (c). This must be considered three ways:

1. The County only considers the siting factors as a precaution only because the Board has determined that a BESS is not a utility facility necessary for public service and therefore the siting factors do not apply.
2. The way ORS 215.275(2) and ORS 660-033-0130(16) are both written gives local jurisdictions the ability to interpret how many factors must be met. The law and rule both state: “due to *one or more* of the following factors” (*emphasis added*) then go on to list six factors which are linked by the coordinating conjunction “and”. If the intention was for only one of the factors to be required for an approval, the correct coordinating conjunction would be “or”. The Board finds that there is nothing legally incorrect *and/or* inconsistent with applicable law in the way that the alternative siting factors are applied in Marion County Code 17.136.040(I), especially to this application for which those siting factors do not apply and are considered as a precaution only.
3. The Board finds that in the alternative, the applicant did not provide sufficient evidence that they met any of the alternative siting factors in MCC 17.136.040(I)(1-6), and therefore even if a BESS were a utility facility necessary for public service, this specific proposal would fail to meet the criteria required for approval. The Board does not find persuasive or convincing the applicant’s argument that the Order is legally incorrect and inconsistent with applicable law.

R5. Alleging failure to consider applicant’s analysis and basis for business needs

The applicant’s analysis and basis for business needs are related to a commercial business that engages in storing energy in batteries, which is a use neither permitted in the EFU zone in Marion County Code, nor contemplated in ORS 215 or OAR 660. The applicant asserts that the BESS is a utility facility necessary for public service. The Board does not find the evidence provided by the applicant persuasive or convincing that a BESS is a utility facility necessary for public service. The Board similarly does not find persuasive or convincing the evidence presented by the applicant to support the applicant’s assertion that decisions about its service needs related to this decision.

R6. Whether the county can rely on its own definition of Utility Facility

The applicant suggests that BESS should be considered a utility facility necessary for public service under MCC 17.136.040(I) and ORS 215.283(1)(c). Marion County Board of Commissioners here reaffirms their determination that a BESS is not a utility facility necessary for public service. The Board does not find the evidence provided by the applicant persuasive or convincing that a BESS is a utility facility necessary for public service. Battery Energy Storage is a novel commercial use that requires connection to an energy grid to either purchase and sell back energy, or store energy for a fee. BESS stores

electrical power, it doesn't produce, transmit, deliver, or furnish electrical power. The Board finds that BESS may provide a beneficial service to electrical utilities, but BESS is not necessary for public service. The applicant suggests that MCC 17.110.584, the definition of Utility Facility in MCC, is inconsistent with state law because it does not include BESS. State law does not contemplate a definition for BESS in ORS 215 or OAR 660, it is therefore incumbent upon the local jurisdiction to determine. The Board finds most plausible the determination that BESS is not contemplated in any zone in Marion County Code. The Board finds most plausible that BESS is not a utility facility necessary for public service.

R7. Whether the county considered the applicant's alternatives analysis

The applicant asserts that the Hearings Officer was incorrect and stated that 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 applicant provided an alternative siting analysis after the Planning Director denied the application. The alternative siting analysis provided by the applicant suggests that there are no non-EFU locations where a BESS could be sited directly adjacent to a Pacificorp Substation. The siting of a BESS next to a substation reduces the cost of establishing a BESS because it decreases the distance of private transmission lines required. The Board finds that the evidence provided in the alternatives analysis is not sufficient to suggest that the proposed BESS must be sited on EFU zoned land. The siting factors are considered by the Board only as a precaution and without waiving the Board's plausible interpretation that a BESS is not a utility facility necessary for public service and therefore not subject to MCC 17.136.040(I).

R8. Whether the applicant adequately demonstrated that they satisfied one of more factors of ORS 215.275(2)

The Planning Director found that if BESS were a utility facility necessary for public service, then the application would not adequately demonstrate satisfaction of any of the factors of MCC 17.136.040(I) which implements ORS 215.275(2). The Hearings Officer found that if BESS were a utility facility necessary for public service, then the application would not adequately demonstrate satisfaction of any of the factors of MCC 17.136.040(I) and/or ORS 215.275(2). The applicant asserts that the application demonstrates satisfaction of factors a, c, and c of ORS 215.275(2) which correspond to factors 1, 2, and 3 of MCC 17.136.040(I). At the public hearing before the Board of Commissioners on March 18, 2026, the applicant representative asserted that only one of the factors must be met. The Planning Director later explained that County considers these factors on balance. Some of the factors such as technical and engineering feasibility, and availability of existing rights of way are so vague that when considered out of context these could be used to ubiquitously approve any facility anywhere. Clearly these are factors to be weighed out. The language of ORS 215.275(2) plainly supports the

County implementation as well when it says “one or more of the following factors” *a, b, c, d, e* “**and**” *f* (emphasis added). Clearly no one factor triggers approval. The Board finds that a BESS is not a utility facility necessary for public service. The Board finds that if a BESS were a utility facility necessary for public service, then the application would not adequately demonstrate satisfaction of any of the factors of MCC 17.136.040(I) which implements ORS 215.275(2) and OAR 660-33-0130(16)(a).

R9. Alleging that the definition in MCC 17.110.584 is an unlawful means to determine whether BESS is a utility facility necessary for public service

The definition in MCC 17.110.584 is for a utility facility. The Board does not interpret MCC 17.110.584 to include BESS. Furthermore, the Board finds that the evidence in the record does not support the assertion that a BESS is a utility facility necessary for public service. The Board does not find persuasive or convincing the applicant’s argument that the definition in MCC 17.110.584 is an unlawful means to determine whether BESS is a utility facility necessary for public service.

R10. Alleging that the county improperly applied the farm impacts test and simultaneously asserting that the applicant has met the farm impacts test

A longer address of this claim, which is irrelevant to this application because MCC 17.136.040(I) applies to utility facilities necessary for public service and BESS is not a utility facility necessary for public service, can be found above under the section precautionarily addressing MCC 17.136.040(I)(6)(c). The Board finds reasonable the interpretation that the phrase “address the requirements of...” does not mean “meet the requirements of...”, rather the code section means what it says. Marion County Code asks the applicant to address the requirements of MCC 17.136.060(A) in order for staff to understand how, if at all, a proposed utility facility necessary for public service may result in an increase in the cost of farming in the area, or result in a change of farming practices in that area. The Board interprets this to be a plausible reading and recognizes that this is a long standing use of the code so that staff is made aware of potential factors of a proposed utility facility necessary for public service in order to impose clear and objective conditions to mitigate and minimize the impacts of the proposed facility as required by ORS 215.275(5) and OAR 660-033-0130(16)(a)(D). Again, this code section (MCC 17.136.040(I)(6)(c)) applies to utility facilities necessary for public service. The Board has determined that BESS are not utility facilities necessary for public service and does interpret any existing section of code (at the time of application) to include BESS. The consideration of MCC 17.136.040(I) was as a precaution only, and the Board found that even if a BESS were a public utility facility necessary for public service it would not satisfy the necessary criteria that the Board interprets to more than adequately implement ORS 215.275(2) and OAR 660-033-0130(16)(a). The Board finds most persuasive and compelling its own interpretation of MCC 17.136.040(I), and rejects the applicant’s allegation that the farm impacts test was improperly applied to this application.

19. Applicant applied for approval of an administrative review to construct a battery energy storage system as a utility facility necessary for public service. The Board determined and maintains that a BESS is not a utility facility as defined in MCC 17.110.584, nor is it a utility facility necessary for public service. If a BESS could be approved as a utility facility necessary for public service, the Board finds that this proposal does not satisfy the applicable criteria in MCC 17.136.040(I).

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 EFU zone 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).

20. For the following reasons, the Applicant's alternative site analysis incorrectly concludes that the proposed site is the only site the proposed BESS can be built.
- A. The alternatives analysis from Applicant indicates that they require a "minimum of 15 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 3 acres to account for access roads, zoning-related setback requirements, environmental buffers, and the ability to increase project capacity by up to 40 additional megawatts." First, the substation already exists at this planned location (and the alternative locations), and the Applicant failed to provide sufficient evidence that additional acreage of the BESS facility needs to be dedicated to a substation. Applicant does not explain why they would need these 2-acres for an already existing substation. Second, the Applicant failed to provide sufficient evidence that planning for additional expansion is necessary for the proposed BESS. While it is reasonable to plan for expansion, that is not a factor that can be considered in determining feasible alternatives—at least without robust evidence in the record. Additionally, the Applicant's alternatives analysis states, "[s]etting aside land for future expansion is an industry-standard practice where feasible due to the favorable economies of scale for increasing capacity." Accordingly, this is a cost benefit and pursuant to ORS 215.275(3) "cost alone may not be the only consideration in determining that a utility facility is necessary for public service."
- B. The alternatives analysis and testimony from Applicant indicates that the proposed site is most desirable because it would require no additional upgrades to the substation that the proposed BESS would connect to. While it is reasonable to place a BESS next to a substation that requires no upgrades, this is a cost benefit and pursuant to ORS 215.275(3) "cost alone may not be the only consideration in determining that a utility facility is necessary for public service."

- C. The alternatives analysis and testimony from Applicant indicates that the proposed site is most desirable because it would require minimal transmission lines to transfer power to and from the substation. Applicant's alternatives analysis references "utility crossing agreements, franchise and encroachment agreements in public roads, easement agreements across non-Project lands, engineering complexity, procurement lead times for utility poles, and power loss in transmission lines" as reasons for the need to place BESS as close (up to one mile away) to a substation. Many of these references by Applicant would be more expensive and more complicated. While it is reasonable to place a BESS next to a substation that requires as minimal transmission lines as possible, this is a cost benefit and pursuant to ORS 215.275(3) "cost alone may not be the only consideration in determining that a utility facility is necessary for public service." The Applicant fails to provide sufficient evidence to justify why a 1-mile radius is necessary as opposed to a 1.2-mile radius or some other larger distance.
- D. The Applicant is a separate company from PacifiCorp. Therefore, while PacifiCorp is willing to partner with Applicant to have the proposed BESS connect to their substation, this BESS does not have to be connected to only a PacifiCorp substation. Technically, this BESS could be sited next to any companies' substation if they were willing to partner with Applicant. Accordingly, Applicant's alternatives analysis' exclusion of any substation not owned by PacifiCorp is an unnecessary exclusion of possible alternatives.
- E. The alternatives analysis does not consider any reasonable alternative configurations and fails to provide persuasive evidence for the specific configurations chosen.
- F. There was evidence in the Applicant's own alternatives analysis appearing to show at least two other possible BESS sites that meet Applicant's chosen criteria and are not in EFU.

Accordingly, Applicant's alternative analysis and associated testimony does not support the BESS needing to be placed on the proposed site in EFU land. Additionally, Applicant's alternative analysis and associated testimony does not support adequately explain why other alternative locations examined by Applicant are not sufficient.

For the reasons stated herein, the application is hereby DENIED.



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 18, 2026

Department: Public Works

Title:

Public Hearing for Administrative Review 25-015/Remington BESS, LLC.

Management Update/Work Session Date: N/A Audio/Visual aids ☐

Time Required: 20 Min Contact: John Speckman Phone: 503-566-4173

Requested Action:

Staff recommends the application be denied. Other options for consideration are:

1. Continue the public hearing.
2. Close the public hearing and leave the record open, to deliberate at a later date.
3. Close the public hearing and approve, or modify the request.
4. Remand the matter back to the Hearings Officer.

Issue, Description
& Background:

Administrative Review 25-015 is an application for establishment of a BESS (Battery Energy Storage System) requiring determination that a BESS is a "utility facility necessary for public service" on a 133.77-acre parcel in an EFU (Exclusive Farm Use) zone located in the 5200 block of Pearson Rd SE, Turner. The Planning Director issued a decision denying the application on August 1st, 2025. The applicant appealed the staff denial. The Marion County Hearings Officer held a duly noticed hearing on the application on November 6, 2025. The Hearings Officer issued a decision on January 21, 2026 denying Administrative Review 25-015. The applicants appealed the Hearings Officer decision. Both the Planning Director and the Hearings Officer determined that a BESS is not a "utility facility necessary for public service".

Financial Impacts:

None

Impacts to Department
& External Agencies:

None

List of attachments:

Appeal, Hearing Officer Decision

Presenter:

John Speckman

Department Head
Signature:

for Brandon Riech



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1120 N.W. Couch Street
10th Floor
Portland, OR 97209-4128

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F. +1.503.727.2222
perkinscoie.com

Marion County Clerk, Bill Burgess

4 FEB '26 PM 1:48

February 4, 2026

VIA MESSENGER

Marion County Board of Commissioners
Attn: County Clerk
555 Court Street NE, Suite 2130
Salem, OR 97301

Steven L. Pfeiffer
SPfeiffer@perkinscoie.com
D. +1.503.727.2261

Ryan Thomas
RThomas@perkinscoie.com
D. +1.425.635.1450

**Re: Remington BESS, LLC Notice of Appeal
Case No. AR 25-015**

Dear Board of County Commissioners:

On behalf of our client, Remington BESS, LLC, please find enclosed for filing in the above referenced case two copies of the following materials:

- Check in the amount of \$500.00 for filing fee;
- Remington's Notice of Appeal Form; and
- Remington's Notice of Appeal, including Exhibit 1 through Exhibit 3.

Remington BESS, LLC files this appeal pursuant to MCC 17.111.070, MCC 17.115.110(G), and MCC 17.122.120. Two hard copies of the appeal documents are being delivered to the Clerk's Office and to the Planning Department by messenger.

Thank you for your attention to this matter.

Sincerely,

Ryan C. Thomas

Steven L. Pfeiffer

Enclosures

RECEIVED
FEB 04 2026
MARION COUNTY
BOARD OF COMMISSIONERS



Marion County
OREGON

APPEAL OF PLANNING DIVISION DECISION

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

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

Fee: \$250

NAME(S): Remington BESS, LLC	ADDRESS, CITY, STATE, ZIP 20 California St, 5th Floor, San Francisco, CA 94111
DATE SUBMITTED: February 4, 2026	APPLICATION CASE NO: Administrative Review 25-015

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

Notice of Appeal: Every notice of appeal should contain:

1. How the decision is factually or legally incorrect; or
2. Present new facts material to the decision; or
3. The specific reasons for the appeal.

I/we are filing this appeal because (attach additional pages if needed):

Please see attached Notice of Appeal to the Marion County Board of Commissioners, which identifies
where and how the Hearing Officer's 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.

FOR OFFICE USE ONLY:

Appeal accepted by: _____ Date: _____

Case Number: _____

☐ Filing fee

☐ File attached

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 P2nd 1030, 321 Or App 481 (1995).

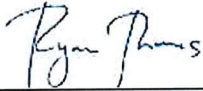
6. The Order was legally incorrect and inconsistent with applicable law by misinterpreting and misapplying the alternative siting factors in ORS 215.275(2) and OAR 660-033-0130(16) (which are also in MCC 17.136.040(I)), to elevate each factor as mandatory review criteria. Appellant applied under factors (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

Ryan Thomas
Steven L. Pfeiffer
Perkins Coie LLP
1120 NW Couch St., 10th 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

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 18th, 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 19th, 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 15th, 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 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 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 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.

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 will not 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.

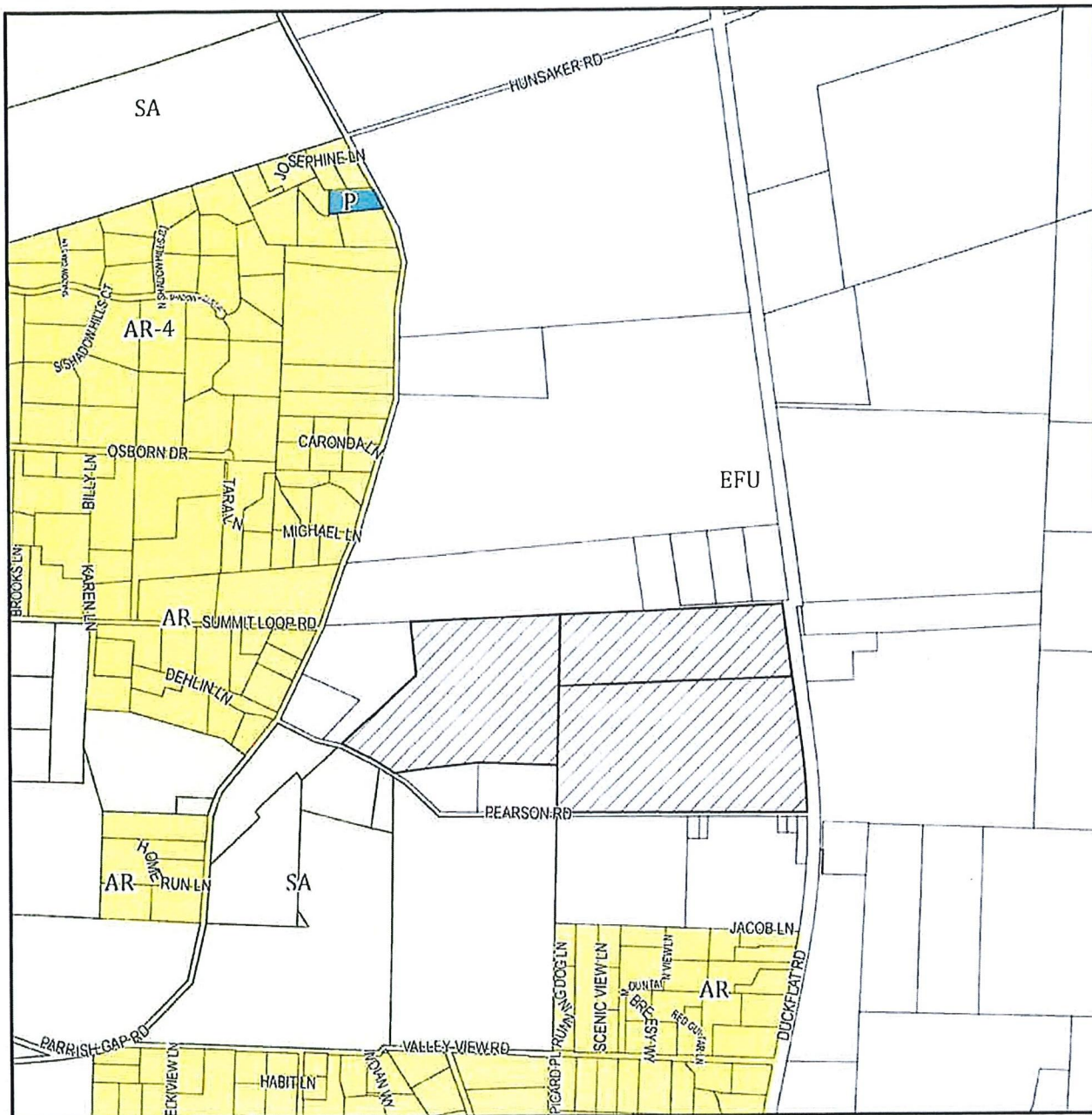
18. Battery Energy Storage Systems are not an identified use in any zone in Marion County Code. The applicant applied for this BESS as if it were a utility facility necessary for public service, but BESSs are not utility facilities necessary for public service. If a BESS could be approved as a utility 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 1st, 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

Legend

Input Taxlots

Lakes & Rivers

Highways

Cities



scale: 1 in = 1,303 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.

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	)	ADMINISTRATIVE REVIEW
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 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

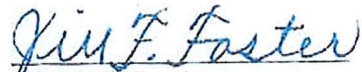
It is hereby found that Applicant has not met its burden of proving the applicable standards and criteria for approval of an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 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 5th 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 confirm 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 21st 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
Stavton, OR 97383

Cristina Gispert
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Oakland, CA 94612

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Pudding River Watershed Council (via email)
anna@puddingriverwatershed.org
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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
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Building Inspection (via email)

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Kaldrich@co.marion.or.us

CTate@co.marion.or.us

Public Works LDEP Section (via email)

jrasmussen@co.marion.or.us

mcldep@co.marion.or.us

JShanahan@co.marion.or.us

School District:

Cascade High School (via email)

charmon@cascade.k12.or.us

Code Enforcement (via email)

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

Special Agencies Notified:

Electricity - Pacific Corp (via email)

www.pacificcorp.com

Water District – Santiam

284 E. Water St.

Stayton, OR 97383

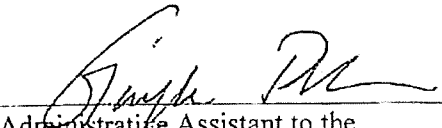
RWE Clean Energy

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

**BEFORE THE PLANNING DIVISION
FOR MARION COUNTY, OREGON**

**In the Matter of an Appeal by the
Applicant, Remington BESS, LLC of a
Decision by the Planning Director, dated
August 1, 2025, Denying the Application for
Administrative Review, Case No. 25-015**

**REMINGTON BESS, LLC
PREHEARING BRIEF**

I. INTRODUCTION

Remington BESS, LLC¹ (“Remington” or “Applicant”) appeals the Marion County Planning Director’s (“Planning Director”) August 1, 2025, decision denying the proposed battery energy storage system project (“BESS Project”) on 15 acres of Exclusive Farm Use (“EFU”) zoned land next to a PacifiCorp substation.² The Planning Director 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).³

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 Planning Director’s denial of the BESS Project is wrong for at least five reasons:

1. **The BESS is a Utility Facility.** The Planning Director 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

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

² Administrative Review (“AR”) 25-015.

³ 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.

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). 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 Planning Director 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 Planning Director treated the factors as “approval criteria” that each must be satisfied—an incorrect interpretation and application of the law. Instead, 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.
3. **Counties Cannot Add Local or Other Restrictions to the Approval Criteria for Uses Allowed Under ORS 215.283(1).** The Planning Director impermissibly imposed additional substantive criteria on the BESS Project—namely that BESS is prohibited in any zone in the County and 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 Planning Director’s application of additional review standards or criteria is prohibited. *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 Irrelevant.** The Planning Director spent much of the decision presenting speculative assertions about the risk and dangers of BESS to support the denial. This is impermissible for 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 Planning Director conflates the clear legislative intent of this factor by concluding, with no evidentiary support, that the BESS Project is so dangerous that it should not be sited on EFU land, turning the factor on its head. Instead, 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. 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 Does Not Apply to the BESS Project, Violates State Law as Applied to EFU Zoned Lands, and is Void as Applied to EFU Land.** To the extent the Planning Director's denial relies on County Ordinance 1480 (the "Ordinance"), which bans BESS in all County zone designations, that Ordinance is both invalid on its face as to EFU zoned land and does not apply to the current application. 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 County ordinance constitutes an impermissible additional local criterion or restriction. It is therefore void as contrary to applicable statutory requirements under the *Brentmar* ruling. *See Brentmar*, 321 Or 481. Second, under Oregon's statutory goal post standard set forth in ORS 215.427(3)(a), and the Planning Director's own interpretation provided via email and at the Ordinance adoption hearing,⁴ the approval or denial of the application shall be based solely on the standards or criteria in effect at the time the application was submitted. Since the application was submitted prior to the Ordinance's passage and deemed complete⁵ it simply cannot be applied by the Planning Director or the Hearing Officer to the subject application.

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 Director's decision to deny the application misconstrued the applicable law and the Planning Director's findings are unsupported by substantial evidence. The Planning Director's denial should be reversed, and AR 25-015 should be approved on appeal.

⁴ *See Supra* Section II.C. ("these amendments don't affect th[e] application []. These amendments affect any application going forward, nothing that's currently in process.")

⁵ Although not explicitly stated by the Planning Director, the application had to have been deemed complete upon submittal since the Planning Director did not conclude otherwise and issued the decision without requesting additional information.

II. FACTUAL BACKGROUND AND CONTEXT

A. BESS Are Necessary Components of Oregon's Energy Infrastructure

Battery energy storage systems 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") [HB 2021](#).⁶ 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, 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.⁷

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).⁸ 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.⁹

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."¹⁰ According to ODOE, BESS are "key tool[s] to integrate renewable resources into the electricity grid."¹¹

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 five megawatt ("MW") hours of energy to 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

⁶ The text of HB 2021 is attached as Exhibit 1. The text of HB 4015 is attached as Exhibit 2.

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

⁸ *See* Exhibit 3 - Grid Reliability 101, American Clean Power (February 2024).

⁹ *See id.*

¹⁰ Exhibit 4 - 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>

¹¹ *See* Exhibit 5 - Energy Storage, Oregon Dep of Energy, Safety & Resiliency, also available at: <https://www.oregon.gov/energy/safety-resiliency/Pages/Energy-Storage.aspx>.

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.”¹²

- **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*.”¹³

2. Electrical Utilities Need BESS

In an effort to meet these statewide targets, electrical utilities, like PacifiCorp and Portland General Electric, 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.¹⁴

PacifiCorp’s 2025 Integrated Resource Plan (“IRP”), and resulting Situs Requests for Proposals (“RFPs”), affirm this need.¹⁵ The 2025 Oregon Situs 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 2029.¹⁶ 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 2029.¹⁷

¹² Exhibit 6 - HB 2193A, House Committee on Energy and Environment, 2015 Regular Session, Final Measure Summary (Apr. 21, 2015).

¹³ Exhibit 7 - 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>.

¹⁴ See Exhibit 8 - 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.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/about/2023_Oregon_Clean_Energy_Plan_October.pdf; Exhibit 8(a) - PacifiCorp, Clean Energy Plan Engagement Series Meeting, August 20, 2025 (2025 CEP: Key Findings) at Slide 13; Exhibit 8(b) – PacifiCorp, Oregon Clean Energy Planning Supplement, Docket No. LC 82 (Apr. 1, 2024) at 4.

¹⁵ Exhibit 9 - 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.pacifiCorp.com/energy/integrated-resource-plan.html>

¹⁶ Exhibit 10 - PacifiCorp 2025 Oregon Situs Request for Proposals (“RFP”) (Oct. 13, 2025) at 5, also available at:

<https://www.pacifiCorp.com/suppliers/rfps/2025-oregon-situs-rfp.html>

¹⁷ See Appendix A (Remington Alternatives Analysis).

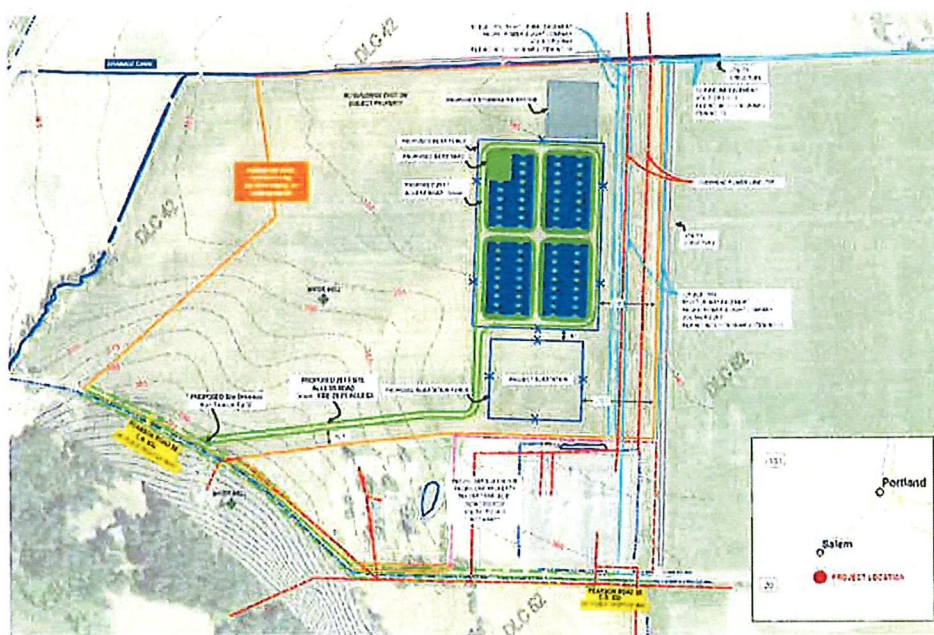
In sum, the State of Oregon recognizes that BESS are utility facilities that are necessary for the operation of the modern grid and essential to achieving the state's renewable energy targets. These state laws and policies demonstrate that BESS are utility facilities necessary for public service.

B. PacifiCorp Needs Battery Storage, and the BESS Project Will Deliver

As described above, the BESS Project responds to PacifiCorp's need for additional storage resources as outlined in its CEP, IRP and Situs RFPs. The BESS Project will consist of battery containers, transformers, inverters, transmission lines, and associated infrastructure and will deliver electricity to the PacifiCorp transmission system, particularly to the Willamette Valley Service Area. It will interconnect with the existing Parrish Gap Substation (referred to as the point of interconnection or "POI") immediately to the south of the proposed project area.¹⁸

Electricity from the BESS Project will be collected at the collector substation on site.¹⁹ The energy will then be transmitted from the collector substation to the POI, and subsequently into an existing PacifiCorp-owned transmission line.²⁰ The BESS Project would have a total electrical output capacity of approximately 199 MW (AC).²¹

Figure 1: Remington BESS Project Site Plan²²



¹⁸ Exhibit 11(a) and (b) - Remington BESS, Administrative Land Use Review Application and Statement ("Application") prepared by Remington BESS, LLC, dated June 2025, at 5, 9 (Figure 2). See also Exhibit 12 (Site Plan); Appendix A.

¹⁹ Exhibit 11(b) at 7 (Section 2.2). See also Appendix A at 1-2.

²⁰ Exhibit 11(b) at 7 (Section 2.2). See also Appendix A at 1-2.

²¹ Exhibit 11(b) at 6 (Section 2.1). See also Appendix A at 1.

²² Exhibit 12 (Remington Site Plan).

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 Remington 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 RWE 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 1 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: 115kV or higher substation with “available transfer capacity,” meaning the specific substation can accept the Project’s power within the proposed timeframe (in this case, by the end of 2029).
- Land availability: A minimum of 15 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 3 acres to account for access roads, zoning-related setback requirements, environmental buffers, and the ability to increase project capacity by up to 40 additional megawatts. 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 project to connect to the grid. These can consist of new breakers at the point of interconnection (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 Point of Interconnection 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, RWE 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 RWE, Remington's parent company. The ATC analysis aggregates data from a variety of sources regarding substation capacity, ownership, prior studies, and other relevant data that helps RWE 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 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 30 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 6 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 1 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 Analysis²³

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 current AR 25-015 application, the Marion County Planning Director approved a very similar BESS project, also owned by RWE, on a 32-acre parcel in the Special Agriculture (“SA”) zone (the “Swift Project”).²⁴ See Exhibit 13, Administrative Review Case No. 24-009.²⁵ 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 Director’s decision as the Ordinance is inapplicable to EFU lands under the Oregon Supreme Court ruling in *Brentmar* and pursuant to ORS 215.427(3)(a).

²³ See Appendix A for the full analysis.

²⁴ 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).

²⁵ Exhibit 13, AR 24-009, is also available at: <https://www.co.marion.or.us/PW/Planning/Documents/AR24-009.pdf>.

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 submittal 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.²⁶ The BESS Project will be situated on 15 acres of land located in the County on land zoned EFU.²⁷

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

On June 25, 2025, Remington learned through media reports that Marion County was proposing a code amendment to ban BESS facilities from being sited in all zones within the County.²⁸ Neither Remington nor the property owner received notice of this proposed amendment, and after months of preparation, they were shocked to hear the news.²⁹ 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.³⁰

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 1480.³¹ 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.

²⁶ See Exhibit 11.

²⁷ Notice of Decision in this case, Administrative Review Case No. 25-015 (“Decision” or “Denial”) at 1.

²⁸ See Exhibit 14 - 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. On April 15th, 2025, the Marion County Board of County Commissioners held a work session to discuss BESS facilities within the County.

²⁹ Exhibit 15, Letter from C. Gisbert to Marion County Board of Commissioners dated July 9, 2025.

³⁰ Exhibit 16, Email from Brandon Reich to John Lewis, July 10, 2025, forwarded by Cristina Gisbert.

³¹ Exhibit 17, 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.³²

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.³³

The Planning Director's representation that the BESS Project application would not be affected by the legislation appeared to induce passage by 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.³⁴

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 clearly is contrary to established law.

D. The County Denied the BESS Project and Remington Appealed

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 that even if BESS were to be allowed, the BESS Project does not qualify because Remington failed to satisfy applicable utility facility "necessity" criteria. Denial at 3.

³² See Exhibit 15.

³³ Exhibit 18 - Board of Commissioners for Marion County July 9, 2025 Meeting Transcribed at 3.

³⁴ Denial at 3.

On August 14, 2025, Remington timely filed the Notice of Appeal in this case under ORS 215.417 and MCC 17.115.110 identifying six legal errors, including that:

- 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 Oregon Administrative Rules (“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*, 321 Or 481;
- 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 BESS Project could not satisfy one or more of the factors in MCC 17.136.040(I); and
- The Decision improperly applies of ORS 215.296.

The Notice of Appeal is attached as Exhibit 19.

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).³⁵

The Planning Director’s focus in denying the application seems to have been on the County’s Ordinance prohibiting BESS in all zones within the County.

The sections that follow detail why this conclusion is legally incorrect and should be reversed.

³⁵ Exhibit 20 - Email from Associate Planner, John Speckman dated October 8, 2025.

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 Hearing Officer'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.³⁶ 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 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

³⁶ 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.

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 County Erred by Finding Otherwise

The Planning Director incorrectly concluded that the BESS Project is not a “utility facility necessary for public service.” The Planning Director provides no legal authority for this conclusion, apart from the Board’s own and wholly unsubstantiated interpretation that BESS were not expressly contemplated by the Legislative or the LCDC in ORS 215.283(1) or OAR 660.033, respectively. That interpretation is not only inconsistent with applicable case law; it is beyond the County’s interpretive authority, as described below.

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. *See Keicher*, 175 Or App 633; *Cox*, 174 Or App at 343–44. The Planning Director’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 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, while 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).

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 BESS, as the County has done here. “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).³⁷ 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.

³⁷ Exhibit 21 – Second House Amendment to Senate Bill 129 by Unanimous Consent (May 28, 1963).

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 51:25.³⁸ The Land Conservation and Development Council (“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.”³⁹

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 and delivery of electricity, but as described in detail in Section II.A above, BESS are an increasingly 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 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.⁴⁰ *Supra* Section II.A. These are critical public utility service functions.

³⁸ We are prepared to provide the audio recording upon request.

³⁹ Exhibit 22 at 5 (Statement of Ron Eber, LCDC Rural Lands Specialist at the time, responding to questions from Commissioner McRobert).

⁴⁰ 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

In sum, the Director's decision includes no interpretive analysis or reference to established case law, and the decision of denial is inconsistent with such appellate rulings. Denial at 3, Conclusion 7.

C. The BESS Project Satisfies the ORS 215.275 Siting Criteria

Once it is established that a facility is a "utility facility," 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 the 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 County misapplied ORS 215.275(2), and shows why the BESS Project satisfies 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

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

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 higher of available transfer capacity. *See Supra* Section II.C; Appendix A.

Friends of Marion County ("FOMC") and the County make much of the map submitted by FOMC of Portland General Electric substations, arguing that it shows that the BESS Project could have been located outside of EFU zones. But a core business objective of the Remington

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.")

BESS Project, and one that is essential to providing utility service, is that the BESS be sited adjacent to a *PacifiCorp* substation to help address the utility needs of *PacifiCorp*. Put simply, PGE substations are irrelevant to this application. Taking FOMC's assertion 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. 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*. Portland General Electric substations are irrelevant to the analysis.

2. The County misapplied ORS 215.275(2), treating the factors as criteria

The County erred by treating the *factors* in ORS 215.275(2) as "approval criteria" that must each be satisfied. After each of the factors, the County stated "the proposal did not meet this criterion," showing that it misunderstood that Remington only needs to meet *one* of the six factors. Here, not only did the County improperly import various additional policy considerations into its analysis, it also misinterpreted and misapplied the factors in MCC 17.136.040(I), ORS 215.275(1) and (2), and OAR 660-033-0130(16).

3. Remington meets three of the factors to demonstrate necessity under ORS 215.275(2)

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). 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

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 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 1 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.

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.

b. Locationally dependent

The BESS 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. OAR 660-033-0130(16).

Here, unique geographical needs of the project cannot be satisfied in other locations. Similar to above, no other sites could accommodate a minimum of 15 contiguous acres of land within 1 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.

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 Portland General Electric 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.

c. Lack of available urban and non-resource lands

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

4. The County 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, much of the Planning Director's Decision focuses on speculative reasons for why the BESS Project is dangerous or harmful, and therefore should not be allowed in EFU. *See Denial at 5.* The County misconstrues and misapplies this factor. ORS 215.275 does not require any showing regarding potential public health or safety risks and those considerations are not relevant to the

ORS 215.275 inquiry. The County is simply not permitted to import such unsubstantiated considerations into its review. *Brentmar*, 321 Or. at 496. And even if it could (which it cannot), the allegations are unsupported. Remington demonstrated and can provide further evidence at hearing that BESS systems are designed such that the chances of fire are nearly zero and mitigation is in place in the event those systems fail. 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.⁴¹ 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.⁴²

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 County's determination, cost was not the sole deciding factor in selecting the location for the BESS Project. Denial at 6. As described above and throughout Appendix A, the BESS Project objectives and siting criteria were crucial to the site selection, and cost of potential network upgrades to alternative sites was one of many factors considered.

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 County improperly required Remington to address the requirements of MCC 17.136.060(A)(1) (the "farm impacts test"). However, that test does not apply here 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 County 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, 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

⁴¹ See Exhibit 11(b) at 10-11, Section 2.4 (Safety).

⁴² See Fire Marshal Comments Letter for Administrative Review 25015, submitted to the County via email July 24, 2025.

would it significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

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

Underlying the Planning Director's denial is its reliance on the Ordinance banning BESS to conclude that BESS are not utility facilities and are not allowed in any County zone. In fact, the Ordinance appears to be the primary, if not sole, basis for the non-facility interpretation. As demonstrated herein, the Ordinance is unlawful and void on its face as applied to EFU land. It also does not apply to the current application, for the reasons set forth below.

First, 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 County'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.

Second, even if the Ordinance is valid as applied to EFU land, under Oregon's statutory goal post standard (ORS 215.427(3)(a)), and the County's own interpretation provided via email and at the Ordinance adoption hearing, the approval or denial of the application must be based on the standards or criteria in effect at the time the application was submitted. Remington's application was submitted prior to the Ordinance's passage and deemed complete within 180 days thereafter.

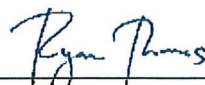
The Ordinance simply does not apply to the County's review and final action.

V. CONCLUSION

The BESS Project is a utility facility that is necessary for public service. Remington demonstrated that the 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 Director's decision to deny the application misconstrued the law and the County's findings are unsupported by substantial evidence. The denial should be reversed, and AR 25-015 should be approved on appeal.

DATED: October 31, 2025

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Alternatives Analysis

1. Introduction and Overview

Oregon state law and Marion County Code require that in order to site a “utility facility necessary for public service” on land zoned for exclusive farm use (“EFU”), an applicant must show reasonable non-EFU alternatives have been considered, and that one or more of six statutory factors nevertheless require the utility facility to be located in an EFU zone. ORS 215.275(1)-(2); MCC 17.136.040(I).

This Alternatives Analysis describes the key objectives, siting criteria, and alternatives that were considered for the proposed Remington Battery Energy Storage System project (“BESS Project”), identifies the siting criteria Remington applied, and discusses why alternatives were eliminated from further consideration due to siting constraints.

2. Project Overview

The BESS Project will consist of battery containers, transformers, inverters, transmission lines, and associated infrastructure that will deliver electricity to the PacifiCorp transmission system, interconnecting with the existing Parrish Gap Substation (which is the point of interconnection or “POI”). The BESS will have a total electrical output capacity of approximately 199 MW (AC). Power from the BESS Project will be collected at the collector substation on site, and energy will then be transmitted from the collector substation to the POI, and subsequently into an existing PacifiCorp-owned transmission line.

The BESS Project responds to PacifiCorp’s need for additional storage in order to provide reliable electric service in western Oregon. As detailed in PacifiCorp’s 2025 Integrated Resource Plan (“IRP”),¹ at least 380 megawatts of new 4-hour storage resources are needed in its Oregon service territory by 2029 in order to:

- Provide enhanced grid reliability, resiliency and stability;

¹ Available at <https://www.pacificorp.com/energy/integrated-resource-plan.html>, see Table P.3 in Volume II.

- Enable integration of renewable energy resources into the grid and avoid rolling blackouts or loss of power;
- Maximize the existing system's capability and improve PacifiCorp's ability to serve growing customer loads while reducing the risk of voltage collapse;
- Further the ability to provide peak shaving and load management;
- Support and defray infrastructure costs to transmission system;
- Provide backup electrical support to the grid that supports disaster recovery and critical infrastructure continuity services; and
- Assist 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 (House Bill 2021), signed into law on July 19, 2021.

PacifiCorp's 2025 Oregon Situs Request for Proposals (RFP), which was approved by the Oregon Public Utilities Commission and is the means by which PacifiCorp will procure the resources described in the IRP, requires project completion and achievement of commercial operations by December 2029. The Remington BESS project has been designed to address PacifiCorp's needs and will do so by providing 199 megawatts of 4-hour duration storage and by coming online before December 2029.

3. Project Objectives

Battery storage enhances the performance of all types of power generation—including, but not limited to, fossil fuel, nuclear, and hydroelectric—by helping balance supply and demand and improving grid reliability. Battery energy storage systems are also a critical part of delivering energy generated by wind and solar projects to the grid when that energy is most needed. Due to fluctuations in the generation of energy from wind and solar depending on the weather, battery storage smooths delivery to the grid; absent battery storage, the grid may have an excess of energy during windy and sunny periods but have a deficit at night or during calm or cloudy periods.

In addition to the general objective of providing storage for electricity for grid balancing purposes, this project has specific project objectives necessary to provide battery storage services to the region. Those objectives are defined below:

Business Objectives:

- Respond to the eligibility and scoring criteria in PacifiCorp's 2025 Oregon Situs RFP² such that the project will be commercially viable with PacifiCorp as the offtaker;
- Connect to a PacifiCorp-owned substation in PacifiCorp's Willamette Valley Service Area.³ Internal studies indicate both demand for battery energy storage and available transmission to

² Available at https://www.pacificorp.com/content/dam/pacorp/documents/en/pacificorp/suppliers/rfps/2025-or-situs-rfp/2025_OR_Situs_RFP_Main_Document.pdf.

³ Shown on map at https://www.oasis.oati.com/woa/docs/PPW/PPWdocs/PP_Service_Territory.pdf includes the highlighted area within Marion, Linn, Polk, Lincoln, and Benton counties. See also Map 7.

and from said storage in this PacifiCorp service area, and the purpose of this project is to respond to this geographically specific demand; and

- Build a storage capacity of at least 199 MW of BESS. The Interconnection Queue Position held by Remington BESS, LLC is for 199 MW, and interconnection studies performed to date are specific to this capacity. The size of this project allows for economies of scale in developing, constructing, and operating the BESS, resulting in an economically viable project.

Public Service Objectives:

- Provide enhanced grid reliability, resiliency, and stability;
- Enable integration of renewable energy resources into the grid and avoid rolling blackouts or loss of power;
- Maximize the existing system's capability and improve PacifiCorp's ability to serve growing customer loads while reducing the risk of voltage collapse;
- Further the ability to provide peak shaving and load management;
- Support and defray infrastructure costs to transmission system;
- Provide backup electrical support to the grid that supports disaster recovery and critical infrastructure continuity services; and
- Assist 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 (House Bill 2021), signed into law on July 19, 2021.

4. Remington Siting Criteria

In order to accomplish the project objectives, Remington BESS, LLC identified specific minimum siting criteria. These siting criteria were used to determine potential sites that satisfied the technical and feasibility needs of the BESS Project. The BESS Project requires:

1. Location: Within PacifiCorp's Willamette Valley Service Area, per the project objectives.
2. Proximity to Point of Interconnection ("POI," i.e., a utility-owned substation): Within 1 mile of a PacifiCorp-owned substation. This is a generally accepted screening criterion for BESS for several reasons, including but not limited to the need for utility crossing agreements, franchise and encroachment agreements in public roads, easement agreements across non-Project lands, engineering complexity, procurement lead times for utility poles, and power loss in transmission lines (note that for BESS, power must travel both in and out of the facility via the project transmission line). Each of these increase with increasing distance from the POI.
3. Substation voltage class and transfer capacity: 115kV 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). An available transfer capacity ("ATC") analysis is determined by performing in-depth study of the transmission system to

determine whether injected power at the substation would cause any overload or reliability concerns on the transmission system. The ATC study is performed using study cases developed by the host utility, in this case PacifiCorp. Based on the results from the preliminary available transfer capacity analysis, an interconnection request is filed with the host utility. The host utility studies the addition of the project and ultimately determines the impact on the transmission system.

4. Land availability: A minimum of 15 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 3 acres to account for access roads, zoning-related setback requirements, environmental buffers, and the ability to increase project capacity by up to 40 additional megawatts. 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. Available land does not strictly need to be unoccupied; however, a parcel would not be considered available if it is already developed with uses that cannot reasonably be moved, removed, or repurposed, or if a landowner is unwilling to lease or sell the property. As an example, a BESS could not be reasonably sited by purchasing and removing numerous homes from a residential neighborhood or by demolishing an existing commercial or industrial facility that is not already at or near end-of-life.
5. Feasible network upgrades: Network upgrades are the developer-funded, utility-constructed upgrades to PacifiCorp's facilities that would be necessary to allow the project to connect to the grid. These can consist of new breakers at the point of interconnection (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 (COD) on or before December 31, 2029. Therefore, the chosen Point of Interconnection 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, RWE considered Network Upgrade costs above \$20 million to be prohibitive for purposes of the fiscal feasibility of an individual BESS facility.
6. Lack of slopes: slopes less than 15%. For slopes greater than this, the construction cost and ground disturbance to level land (cut and fill) to accommodate BESS foundations becomes

substantial. This can result in loss of topsoil, substantially longer site preparation time, and increased noise, dust, and risk of erosion.

7. Lack of wetlands or other water features: No major wetlands, water features, or environmentally critical areas that would impede development.
8. Zoning: land use zoning allows for permitting of utility facilities.
9. Access: sufficient site access is available, meaning that construction equipment and BESS modules, utility poles, and other equipment can be delivered to the site without creating the need for substantial new road-building.
10. Avoids interference with existing utility easements. Electrical substations are connected by high-voltage transmission lines that carry electricity over long distances. The required ground clearance for these lines, and the typically exclusive nature of the easements across private and public lands that they occupy, means that a BESS cannot be sited within a transmission line easement (e.g., beneath the lines themselves). Additionally, where existing underground utilities (e.g., water, sewer, gas pipeline, buried electrical) are located, the BESS facility must avoid these easements as well, for both legal and safety reasons. A potential site that is crossed by an existing utility easement may not have sufficient space for a BESS facility after designing around these encumbrances.

5. Alternatives Analyzed

Based on the projects objectives and siting criteria, Remington BESS evaluated potential sites for the development of the BESS Project. Several alternative sites were considered for the BESS Project which address the development of a similar project elsewhere in Oregon. These alternatives are infeasible for the following reasons:

5a. No Project Alternative

The No Project Alternative would mean that the Project would not be constructed. By not construction new storage capacity, this alternative would:

- Reduce grid reliability, resiliency, and stability as the energy mix on the grid becomes more intermittent (e.g., as more solar and wind energy sources are added to the electricity supply).⁴ This may result in rolling blackouts or loss of power;
- Reduce integration of renewable energy resources into the grid, in opposition to the requirements of Oregon's Clean Energy Bill;
- Reduce the existing system's capability and reduce PacifiCorp's ability to serve growing customer loads while increasing the risk of voltage collapse;
- Reduce PacifiCorp's ability to provide peak shaving and load management; and

⁴ A substantial addition of intermittent supplies to Oregon's electricity mix before December 31, 2027 is anticipated and facilitated by Governor Kotek's Executive Order 2025-25, available at <https://www.oregon.gov/gov/eo/eo-25-25.pdf>.

- Not address the need for backup electrical support to the grid that supports disaster recovery and critical infrastructure continuity services.

5b. Other Project Location Alternatives

The potential for relocating the BESS Project to another site in the area was considered but deemed infeasible.

To identify potential BESS Project locations, Remington BESS, LLC first identified eligible PacifiCorp-owned substations within the utility's Willamette Valley Service Area. Remington focused on this service area primarily due to: 1) information about demand, grid balancing, and anticipated transmission upgrades provided by the utility in its IRPs (2025 and previous years' IRPs); and 2) the proprietary available transfer capacity (ATC) analysis performed by Remington BESS, LLC's parent company, which indicated capacity may be available at the target POI. The ATC analysis aggregates data from a variety of sources regarding substation capacity, ownership, prior studies, and other relevant data that helps RWE collect and analyze data about substations, ultimately providing information about the likelihood of available transfer capacity at any given substation.

PacifiCorp's transmission system in the Willamette Valley 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 would need to be located within the same area. Locating storage outside of the area would trigger "wheeling" charges (charges for transferring, or "wheeling," electricity through lines owned by other utilities, such as Portland General Electric 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.

Potentially eligible substations in this Willamette Valley Service Area included those of 115kV voltage class or higher and with available transfer capacity. Using queries of numerous databases, review of transmission studies available from PacifiCorp, and other desktop and field research, Remington BESS, LLC initially identified 30 PacifiCorp-owned substations 115kV or higher within the study area. The ATC analysis then narrowed this list of eligible substations to 6 that may have available transfer capacity.

It is important to note that the ATC analysis, which analyzes available information on the generation and output at each substation, can only indicate a likelihood of available transfer capacity, but is not proof that such capacity exists. Only the utility (here, PacifiCorp) can confirm this and notify the interconnection customer (here, Remington) whether major network upgrades must be constructed to accommodate a project. This is done through a series of technical studies performed by PacifiCorp *only* for projects that have entered its interconnection queue after applying for a queue position, demonstrating a minimum of project readiness criteria have been met, and paying the study costs. This study process can take several years before a project has enough information about its interconnection requirements to enter into an agreement with PacifiCorp to actually perform the necessary upgrades and ultimately construct and bring the project online. However, by reviewing the study results of other projects in the queue, it is possible to make educated decisions about which substations are the most viable candidates for a project POI.

Using the list of 6 substations developed based on the ATC analysis, Remington then used GIS mapping to apply filters and narrow eligible Project sites based on the site criteria explained above, for example, land with appropriate zoning within 1 mile of the eligible substations. See Maps 1-6. With the site

criteria and project objectives applied, only the Remington site is feasible. The sections that follow provide detail regarding that analysis by substation.

Table 1: Substation Summary (See Map 1 for substation locations)

Substation Name	Voltage Class	County	Map #
Parrish Gap	230 kV	Marion	2
Jefferson	115 kV	Marion	3
Diamond Hill	230 kV	Linn	4
Fry	230 kV	Linn	5
Calapooya	230 kV	Linn	6
Brownsville	115 kV	Linn	6

Parrish Gap Substation (Marion County)

No non-EFU lands meet the Siting Criteria.

As illustrated on Map 2, only one parcel zoned Rural - Acreage Residential (2-4 acres) (R-AR) within 1 mile of the Parrish Gap Substation meets the minimum site size requirement of 15 acres; however, the topography of the area showed slopes greater than 15% within all of the parcels on the west side of Parrish Gap Road SE as well as on the south side of Pearson Road NE. No other non-EFU parcels (or potential assemblage of parcels) are within 1 mile of the Parrish Gap substation and meet the size or slope criteria necessary for the BESS project.

Jefferson Substation (Marion County)

Remington identified several non-EFU parcels within 1 mile of Jefferson Substation; however, as illustrated on Map 3, no non-EFU lands meet the Siting Criteria. For example:

- Future Urban Development/Lower density residential, Commercial/Mixed-Use/Medium-density residential, Rural - Acreage Residential (2-4 acres), and Industrial – Light: All but one of the parcels with these zones are below the minimum site size requirement and already developed with homes, schools, and/or businesses. One 20-acre parcel is located near the Jefferson Substation, but is bisected by Morgan Creek and its associated riverine and freshwater forested/shrub wetlands, all of which are visible in desktop review of the site. The necessary setbacks from these jurisdictional features would remove enough of the parcel from the buildable area that there would be insufficient space to build a BESS of the required 199 MW capacity here. None of the parcels with this zoning are eligible based on size criteria or absence of waters and wetlands, and none could be included in an adequately-sized parcel assemblage that would not require inclusion of adjacent EFU-zoned parcels.
- Public & Semi-public uses: The parcels with this zoning are owned by the City of Jefferson and include a cemetery and the city's new (2022) water treatment plant. These do not meet the availability criterion.

- Rural Industrial: The only parcel with this zoning is less than 2 acres, and it is fully developed and surrounded by small, developed residential parcels. This parcel does not meet the size or availability criteria.

Diamond Hill Substation (Linn County)

As illustrated on Map 4, there is no non-EFU zoning within 1 mile of the Diamond Hill Substation. The nearest non-EFU parcels would require a transmission line 2 miles in length to reach the substation, and would require a crossing of I-5, which in this location is a span of about 300 feet. This length of transmission line, considered with the need for a 300-foot bore beneath an interstate highway, would make the project financially infeasible (i.e., not commercially competitive). Therefore, this is not a reasonable alternative to the proposed location, and no non-EFU parcels in the vicinity of the Diamond Hill Substation meet the siting criteria.

Fry Substation (Linn County)

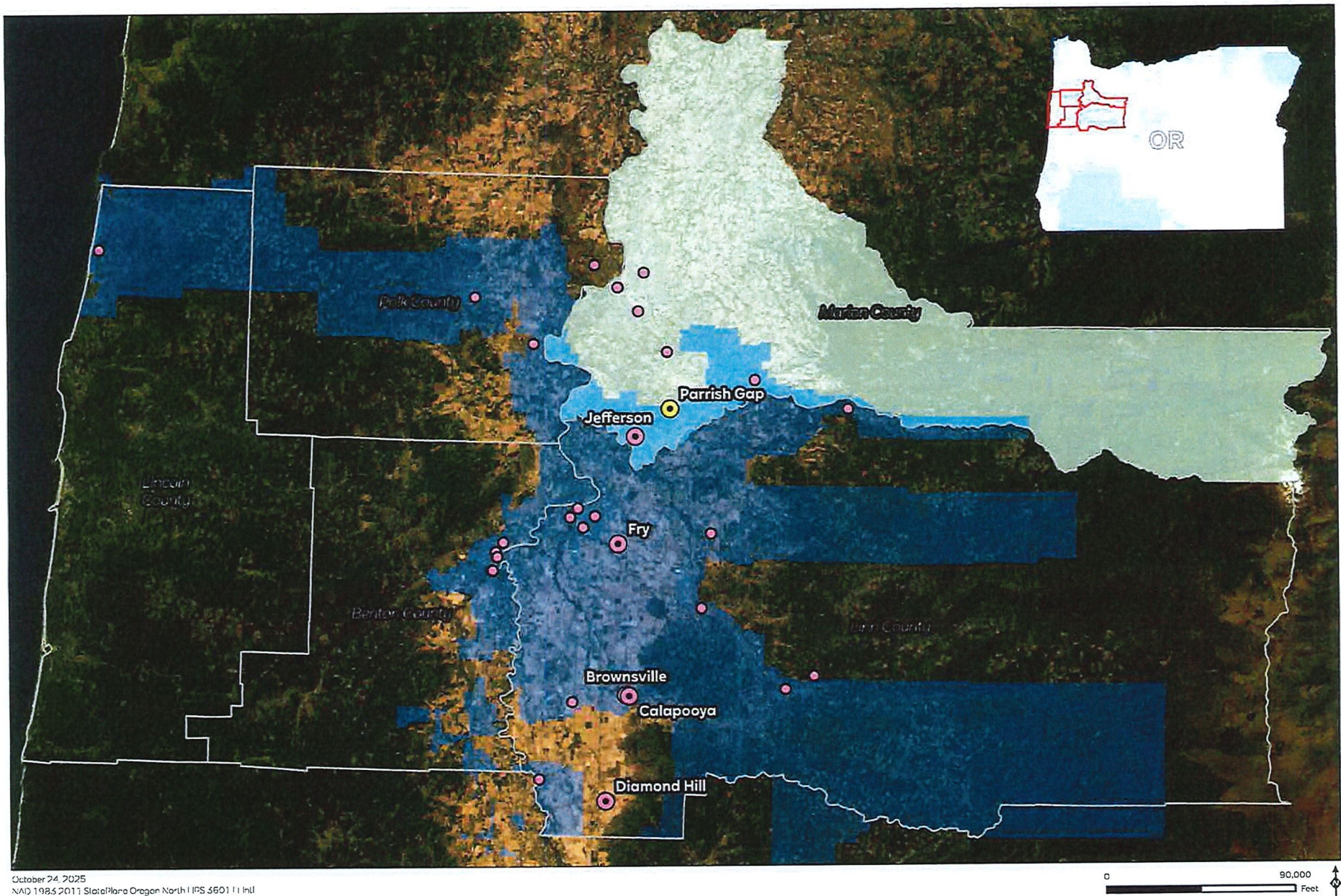
As illustrated on Map 5, there is no non-EFU zoning within 1 mile of the Fry Substation. The nearest non-EFU parcels are not available, being occupied with existing uses such as a foundry and several densely developed residential neighborhoods. No non-EFU parcels in the vicinity of the Fry Substation meet the siting criteria.

Calapooya Substation and Brownsville Substation (Linn County)

These substations are considered together because, as illustrated on Map 6, they are located only 1,000 feet from one another. The majority of the land within 1 mile of these substations is zoned EFU. There are some Light Industrial and Rural Industrial zoned parcels within 1 mile of these substations, but these parcels are already developed with businesses and homes.

6. Conclusion

As demonstrated above, Remington assessed potential alternative sites but based on the project and siting criteria no other sites are feasible and the BESS Project must be sited at the Parrish Gap substation on EFU land.



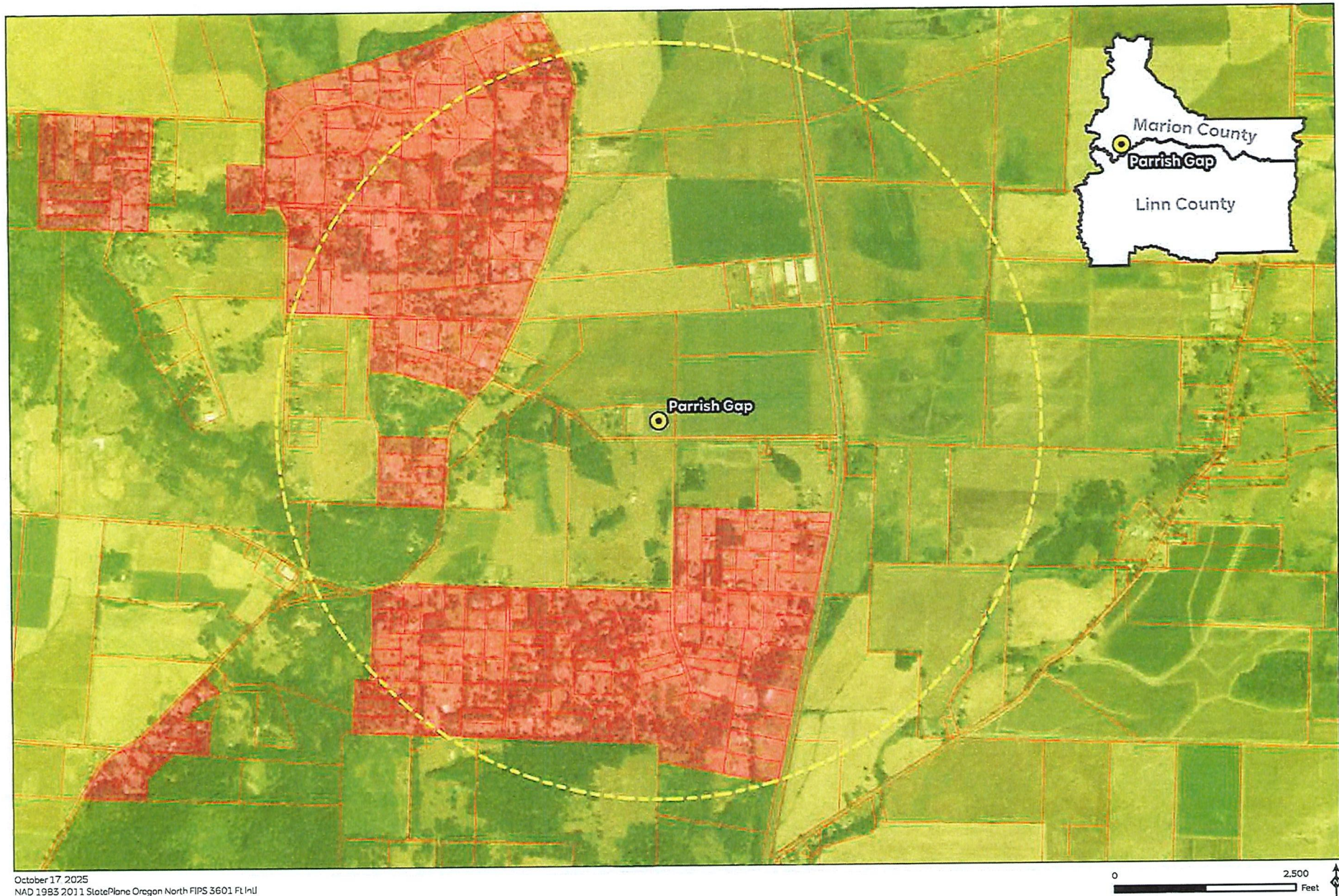
Remington BESS

Map 1:
115+ kV PAC Substations
Western Oregon

- Proposed Project Substation
- Other Evaluated Substations
- PacifiCorp Willamette Valley Service Area
- Alternative Substations
- County Line

RWE

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Remington BESS Zoning Maps

Map 2:
 Parrish Gap Substation - 230 kV
 Marion County, OR

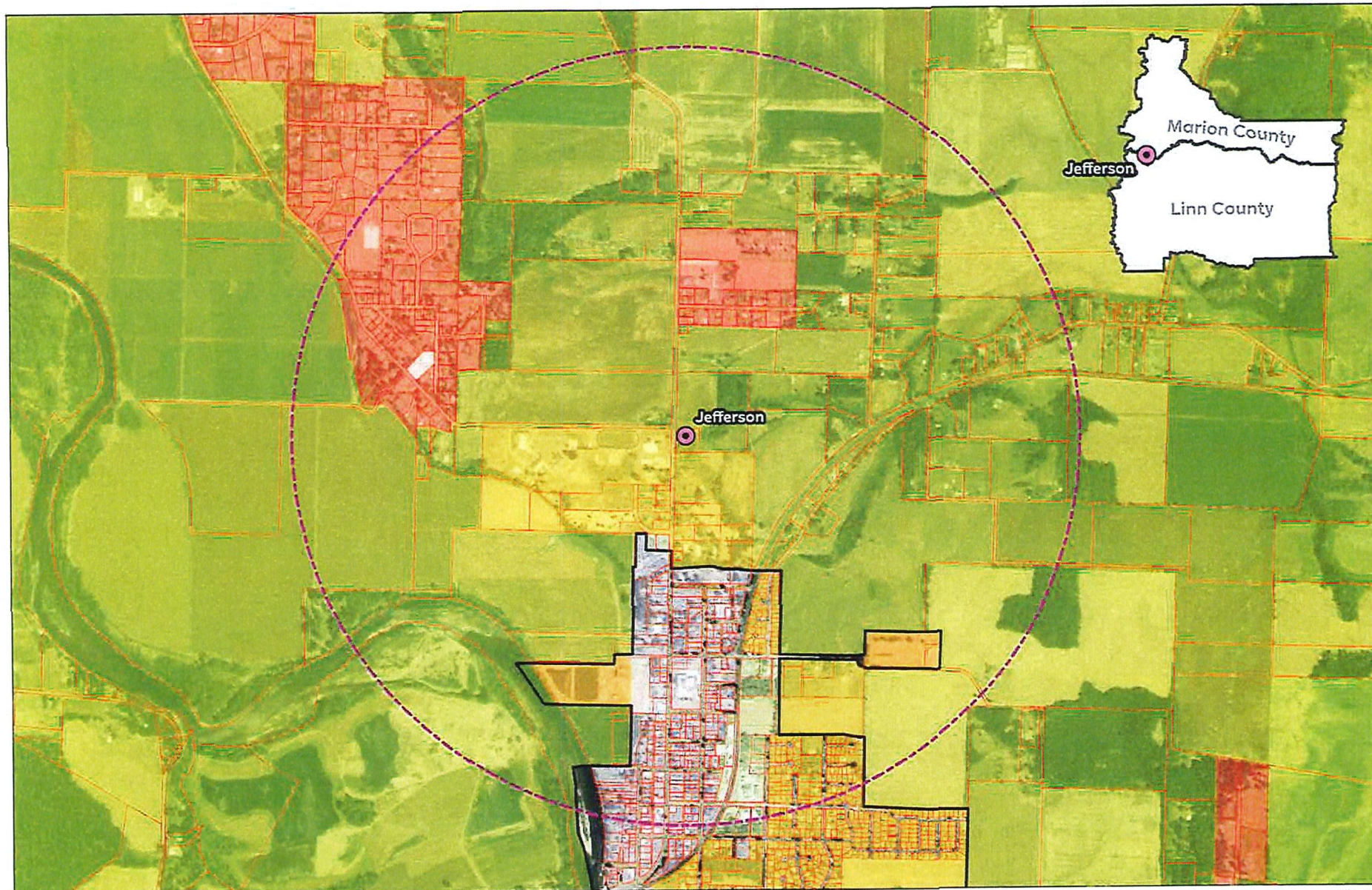
- | | | | | | |
|--|-----------------------------|--|-----------------------|--|-------------------------------|
| | 1 mi Substation Buffer | | Parcel Boundaries | | Public & Semi-public Uses |
| | Proposed Project Substation | | Exclusive Farm Use 80 | | Rural Residential (2-4 acres) |

Exhibit 3

Page 33 of 38

RWE

Map produced by RWE Clean Energy Development, LLC (RWE). Final locations to be verified on-site by RWE personnel. The recipient shall not reproduce or redistribute the map without the express written consent of RWE. By accepting the receipt of this map, the recipient agrees to use the map only for the purpose authorized by RWE.



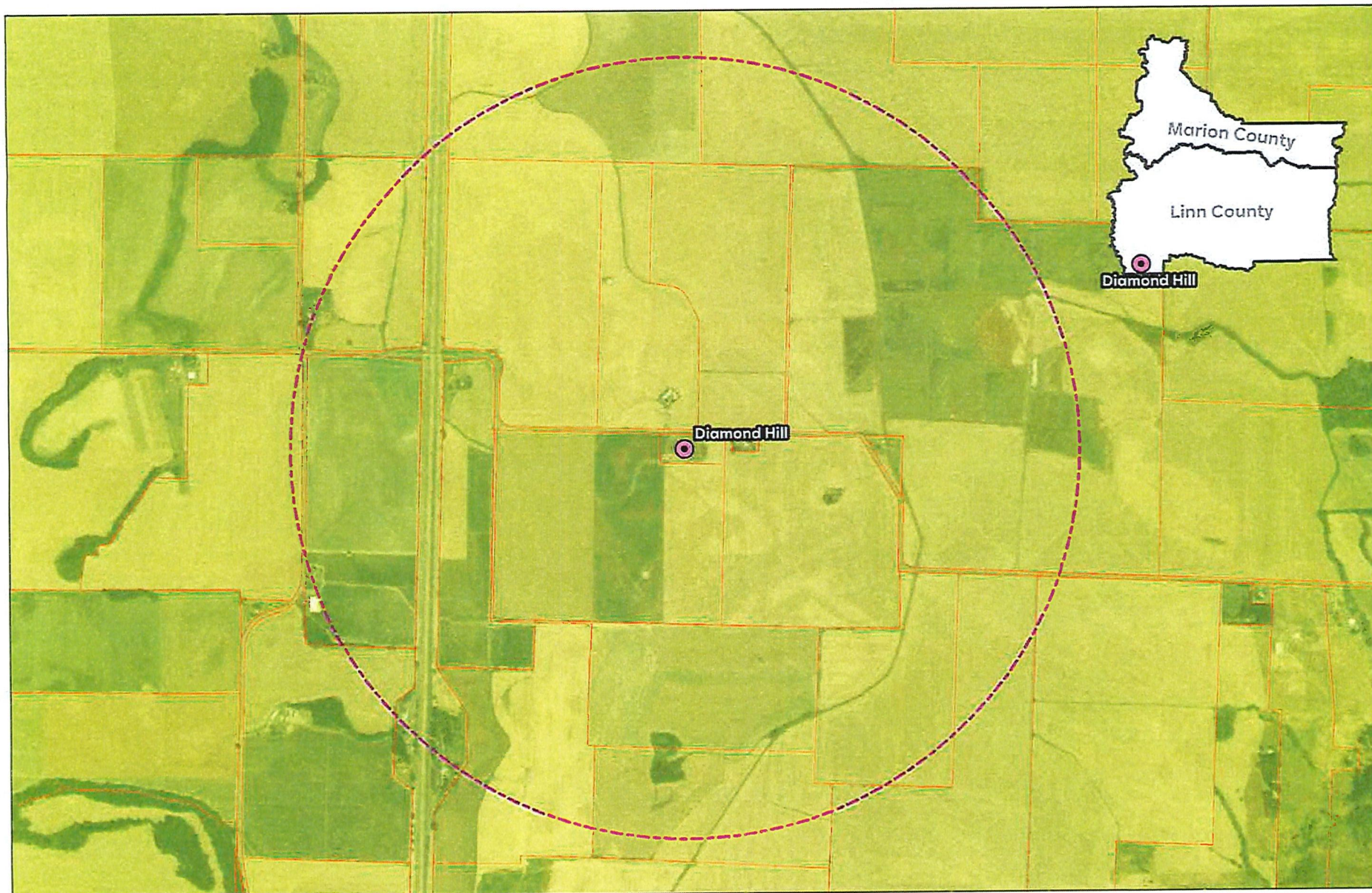
October 27, 2025
 NAD 1983 2011 StatePlane Oregon North FIPS 3601 F.L In1

Remington BESS Zoning Maps Map 3: Jefferson Substation - 115 kV Marion County, OR

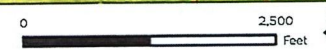
- | | | | |
|------------------------|--------------------------|--------------------------------|-------------------------------|
| 1 mi Substation Buffer | Future Urban Development | Medium-density Res. | Rural Industrial |
| Parcel Boundaries | High-density Res. | Mixed Farm-Forest 80 | Rural Residential (2-4 acres) |
| Commercial - General | Industrial - Light | Mixed-Use Com. & Res. Med-high | Municipal Boundary |
| Exclusive Farm Use 80 | Medium Low-density Res. | Public & Semi-public Uses | |

RWE

Map produced by RWE Clean Energy Development, LLC ("RWE") for locations to be verified on site by RWE personnel. The recipient shall not reproduce or redistribute the map without the express written consent of RWE. By accepting the receipt of this map, the recipient agrees to use the map only as expressly authorized by RWE.



October 17, 2025
 NAD 1983 2011 StatePlane Oregon North FIPS 5601 F.U. Unit



Remington BESS Zoning Maps

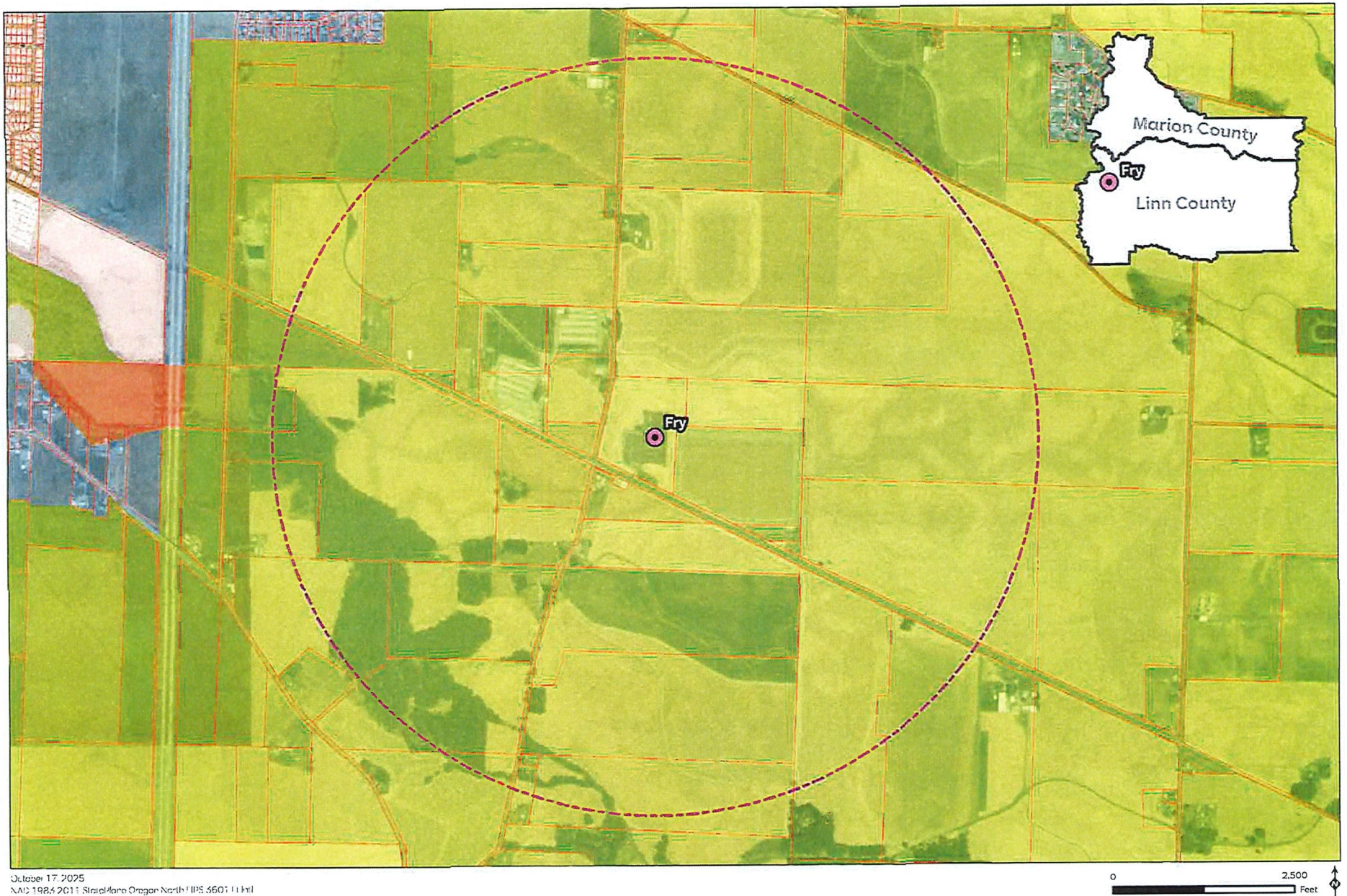
Map 4:
 Diamond Hill Substation - 230 kV
 Linn County, OR

-  Parcel Boundaries
-  1 mi Substation Buffer
-  Exclusive Farm Use 80

RWE

Exhibit 3
Page 35 of 38

Map produced by RWE Clean Energy Development LLC (RWE) for use in connection with the RWE Clean Energy Development Project. This map is not intended to be used for any other purpose. The user assumes all responsibility for the use of this map. The user agrees to use the map and any information contained herein for the purposes intended by RWE.



Remington BESS Zoning Maps

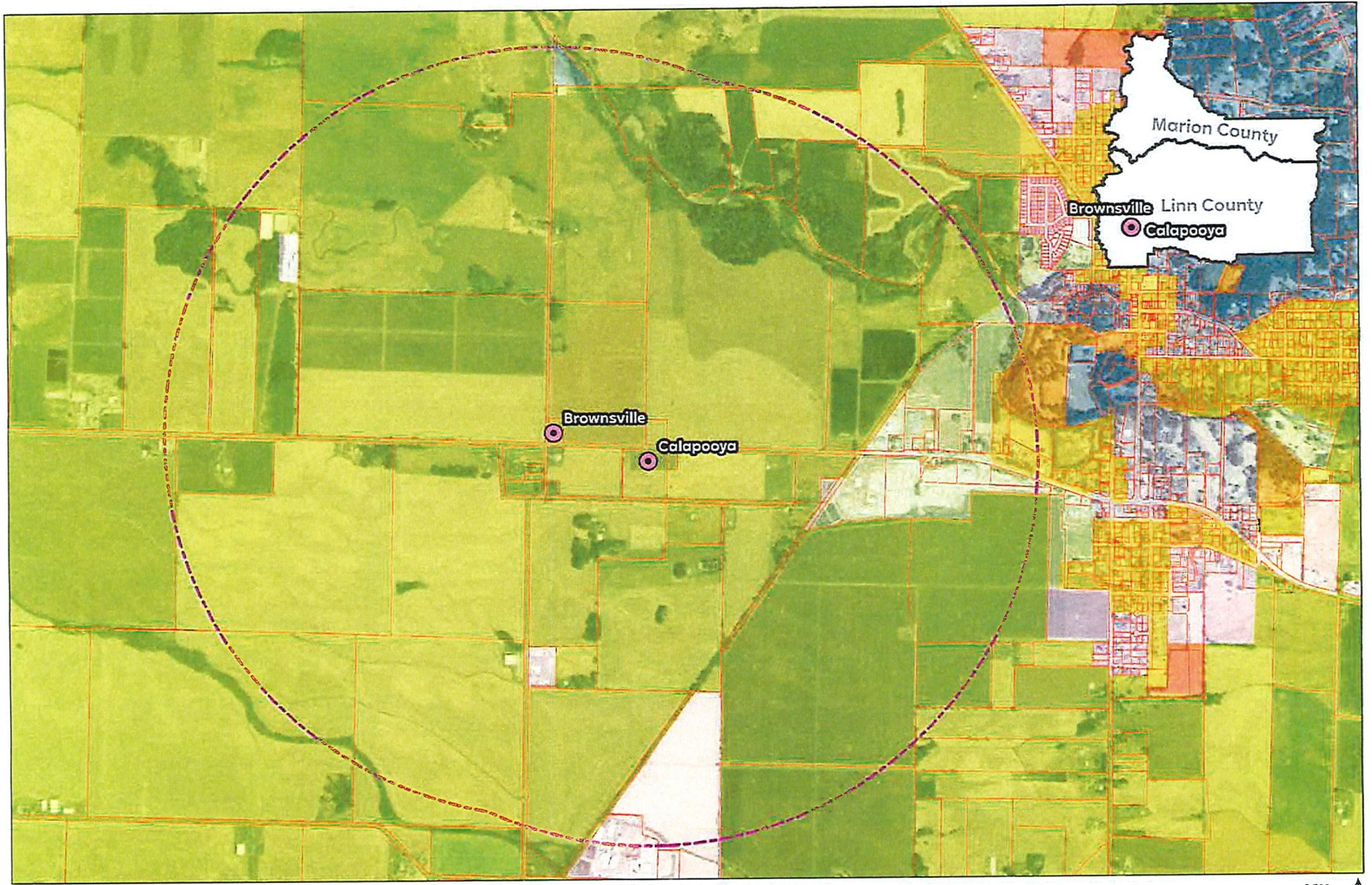
Map 5:
 Fry Substation - 230 kV
 Linn County, OR

Parcel Boundaries	Middle Housing	Rural Residential 1 acre
Exclusive Farm Use 20+	Other	Rural Residential 5 acres
Exclusive Farm Use 80	Parks & Open Space	1 mi Substation Buffer

RWE

Exhibit 3
Page 36 of 38

Map created by RWE Clean Energy Development, LLC ("RWE") for the purpose of being used in the Fry Substation 230 kV Project. The map is not intended to be used for any other purpose. The map is not a legal document and should not be used to make any legal decisions. The map is not a survey and should not be used for any other purpose. The map is not a legal document and should not be used for any other purpose. The map is not a legal document and should not be used for any other purpose.



October 27, 2025
NAD 1983 2011 StatePlane Oregon North UTM 5601 Feet

0 2,500 Feet

Remington BESS Zoning Maps

Map 6: Brownsville Substation - 115 kV

Calapooya Substation - 230 kV

Linn County, OR

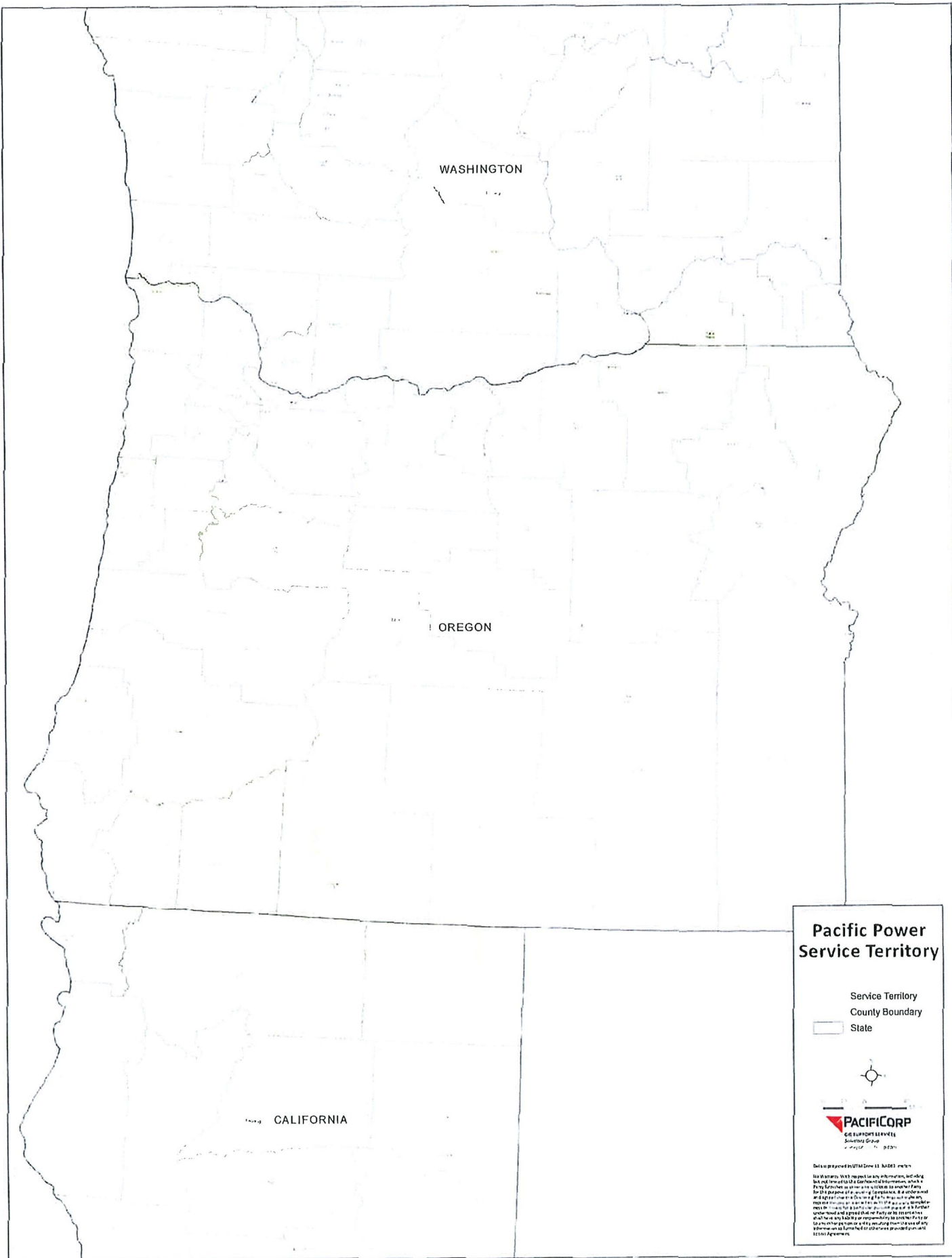
Parcel Boundaries	Industrial - Light	Mineral and Aggregate	Rural Industrial
Commercial - Central	Low-density Res.	Mixed Farm-Forest 80	Rural Residential (2-4 acres)
Commercial - General	Medium Low-density Res.	Other	Rural Residential 5 acres
Exclusive Farm Use 80	Medium-density Res.	Public & Semi-public Uses	1 mi Substation Buffer

Map produced by RWE Climate Integration Department, LLC (RWE) for use by Linn County, Oregon. The map is a representation of the zoning data as of the date of the map. The map is not a legal document and should not be used for legal purposes. The map is for informational purposes only. The map is not a legal document and should not be used for legal purposes. The map is for informational purposes only.

RWE

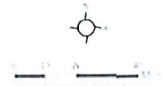
Exhibit 3

Page 37 of 38



**Pacific Power
Service Territory**

Service Territory
County Boundary
State



PACIFICCORP
ELEC SUPPLY SERVICE
SOUTHERN GROUP
A DIVISION OF THE PACIFIC POWER & LIGHT COMPANY

This is a proposed EUTM Zone 11 NAD83 map.
No warranty is made for any information, including
but not limited to, the correctness of the information, which
may be furnished to another party, or the use of the
information for any purpose other than that intended,
and the user assumes all responsibility for any use of the
information. The user agrees to hold Pacific Power & Light
Company and its subsidiaries harmless from any and all
claims, damages, losses, or expenses, including reasonable
attorney's fees, that may be incurred by the user or any
third party as a result of the use of the information.
The user agrees to hold Pacific Power & Light Company
harmless from any and all claims, damages, losses, or
expenses, including reasonable attorney's fees, that may
be incurred by the user or any third party as a result of
the use of the information.

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	)	ADMINISTRATIVE REVIEW
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 Situs 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 5th 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 confirm 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 21st 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
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1000 Friends of Oregon
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Portland, OR 97204-2597

Pudding River Watershed Council (via email)
anna@puddingriverwatershed.org
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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
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Public Works LDEP Section (via email)
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School District:
Cascade High School (via email)
charmon@cascade.k12.or.us

Code Enforcement (via email)
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

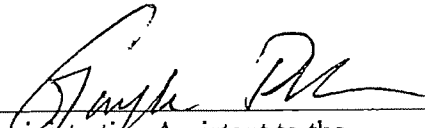
Special Agencies Notified:

Electricity - Pacific Corp (via email)
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