



WASHINGTON COUNTY
Department of Land Use & Transportation
Current Planning Services Division
155 North First Avenue, Suite #350-13
Hillsboro, Oregon 97124-3072
phone: (503) 846-8761 fax: (503) 846-2908
www.co.washington.or.us

NOTICE OF DECISION & STAFF REPORT

PROCEDURE TYPE II

CPO: 5

**RURAL/NATURAL RESOURCE PLAN
LAND USE DISTRICTS:**
EFU (Exclusive Farm Use) District

PROPERTY DESCRIPTION:
ASSESSOR MAP: TAX LOT NUMBER(S):
2S1 29A 1300

LOT SIZE:
22.81 acres

PROPOSED DEVELOPMENT ACTION: Special Use Review and Floodplain Alteration for a Public Utility
Necessary for Public Service (Battery Energy Storage System) in the EFU District

DECISION:

Approval _____ Approval with Conditions ☒ Denial _____

Signature ASW/B Date 12-19-24
Stephen Shane, Principal Planner, Current Planning Services

Staff Planner: Maitreyee Sinha, 503-846-3835

Attachments:

- A. -- Vicinity Map
- B. -- **CONDITIONS OF APPROVAL**
- C. -- Staff Report
- D. -- Appeal Information

CASEFILE: L2400128-SU/FP

APPLICANT:

Goldfinch Energy Storage, LLC
Tommy Nelson
421 W 15th
New York, NY 10011

APPLICANT'S REPRESENTATIVE:

Dudek (Erin Phillips)
605 Third Street
Encinitas, CA 92024

OWNER:

Home Depot USA Inc
Property Tax Dept #4015
PO Box 105842
Atlanta, GA 30348

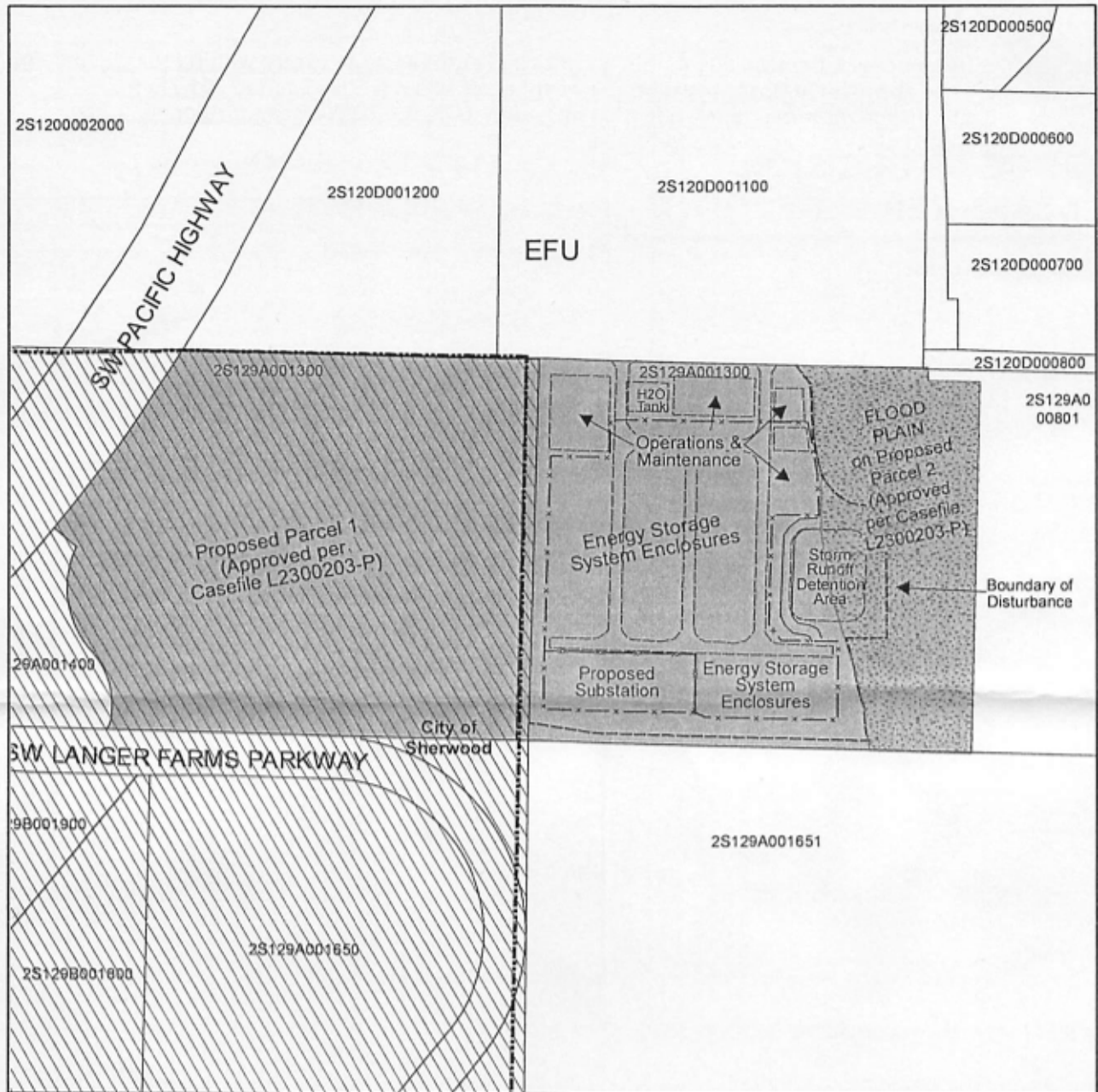
LOCATION: On the east side of SW Pacific Highway,
north of its intersection with SW Langer Farms
Parkway.

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TAX MAP/LOT NO. 2S1 29 A0 01300

ATTACHMENT A VICINITY MAP

CASEFILE / PROJECT #: L2400128-SU/D/FP



↑ NORTH

NOT TO SCALE



AREA OF CONSIDERATION

SITE & SURROUNDING LAND USE DISTRICTS:

EFU District (Exclusive Farm Use)

Urban Growth Boundary

City of Sherwood

REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN

- A. Washington County Comprehensive Plan
- B. Applicable Community Plan (See Front of Notice)
- C. Transportation System Plan
- D. Washington County Community Development Code:
 - ARTICLE I, Introduction & General Provisions
 - ARTICLE II, Procedures
 - ARTICLE III, Land Use Districts
 - ARTICLE IV, Development Standards
 - ARTICLE V, Public Facilities and Services
 - ARTICLE VI, Land Divisions & Lot Line Adjustments
 - ARTICLE VII, Public Transportation Facilities
- E. R & O 86-95 Traffic Safety Improvements
- F. ORD. NO. 738, Road Design and Construction Standards
- G. ORD.691-A, 729, 741, 746, 751, 793-A Transp. Development Tax

Attachment B

CONDITIONS OF APPROVAL

- I. In accordance with Section 201-4, this permit shall automatically expire within four (4) years of the date of approval, unless: the permit is revoked as provided by Section 201-7; an application for a permit extension is filed pursuant to Section 201-5; or, development has commenced as provided in Section 201-6.

- II. Prior to any Ground-Disturbing Activities and issuance of a Grading Permit, the Applicant Shall:
 - A. Submit to the Current Planning Services Division (503-846-8761) evidence of the following:
 1. A right-of-way permit (or an exemption thereof) has been obtained from Oregon Department of Transportation (ODOT) for access to SW Pacific Highway (Highway 99), for construction work and for the purpose of maintenance, repair, and reconstruction. (Section 207-5)
 2. That the applicant's engineer has inspected all public roads providing access to the construction site to document pre-construction road conditions. (Section 430-105.4)
 3. A signed and recorded waiver of the right of remonstrance against accepted farm/forest practices on surrounding properties. A form for this purpose is available at the Current Planning Services counter (503-846-8761). The document shall be signed by the property owner and recorded with the Recording Section of the Assessor's Office. The recorded waiver runs with the land as a covenant to the deed. (Section 340)

 - B. Submit to the Building Services Division (503-846-2846) a grading permit application (Sections 410 and 426). The grading permit application shall include information as determined necessary by the Building Engineer, which may include:
 1. A site-specific geotechnical engineering report with recommendations for site development. The report should be stamped and signed (electronic signature accepted) by an Oregon-registered engineer.
 2. A drainage analysis report prepared and stamped by an Oregon-registered engineer showing that any additional impervious areas resulting from the proposed work will not impact surrounding properties negatively.
 3. Evidence of access on to SW Pacific Highway via a public road easement over Tax Lots 2S1 20D 1100 and 1200. (Sections 409 & 207-5)
 4. Structural details regarding the private road/parking lot on the plans per site specific geotechnical engineering recommendations.
 5. For development within the floodplain, certification by a licensed professional engineer that no net fill will occur in the flood plain, and that the project complies with the standards of Sections 421-7.1 through -7.9, as applicable.
 6. Besides the above items, all requirements given on the Building Services Grading Permit application form.

A. Submit to Building Services Division (503-846-3470):

1. Site plan consistent with plan(s) stamped 'Preliminary Approval' in the casefile (Section 207-5)
2. For any development within the floodplain, a hydraulic analysis certified by a licensed engineer demonstrating there will be no impact to velocity of flood flows, that all cut and fill shall be structurally sound and designed to minimize erosion, and that all fill below the flood surface elevation shall be accompanied by an equal amount of cut or storage within the boundary of the development site. (Section 421)
3. Evidence that a right-of-way permit (or an exemption thereof) has been obtained from Oregon Department of Transportation (ODOT) for access on to SW Pacific Highway.
4. Evidence of utility easements on all off-site properties or right-of-way (as applicable) that will be utilized by the proposed development. (Section 207-5)
5. Payment of applicable System Development Charges (SDCs) and Transportation Development Tax (TDT), as applicable. (Section 207-5)

Note: TDT shall be required as determined by Ordinance 793-A.

V. Prior to Final Inspection Approval/ Occupancy of the proposed Facility:

A. Submit to the Current Planning Services (503-846-8761):

1. For development within the floodplain, certification prepared and stamped by a Registered Professional Engineer that the completed project resulted in no net fill, no loss in flood storage, and no increase in erosive velocities within the floodplain. Document shall specify disposal location for any soils removed from the site and shall provide evidence that disposal occurred with appropriate permits by the applicable jurisdiction. (Section 421)
2. Evidence of final approval of a right-of-way permit (or an exemption thereof) from Oregon Department of Transportation (ODOT) for access on to SW Pacific Highway.
3. Evidence of installed eight-foot high solid fencing and dense vegetated landscaping (as depicted on applicant's submitted landscaping plan) around the perimeter of the proposed development. (Section 411)
4. Evidence of three (3) parking spaces in the northwest portion of the project site. All parking spaces must be surfaced in accordance with the requirements of Section 413.
5. Request a site visit by staff planner (Maitreyee Sinha, 503-846-3835) for determining conformance of the completed development with that approved. (Section 207-5)

VI. Additional Conditions:

- A.** Within 90 days of completing construction of the battery energy storage system, the applicant shall provide to Current Planning Services Division (503-846-8761):
1. Certification from a registered professional engineer that all public roads used to access the construction sites have been returned to their pre-construction condition or better. (Section 207-5)

2. Evidence that all disturbed areas have been re-vegetated pursuant to provisions of Section 410-3. Re-vegetation with native plants is strongly encouraged.
- B. This development shall be constructed in accordance with the conditions of this decision, the approved plans, and the standards of the Community Development Code. (Section 207-5)
- C. Excess soils from construction of the project (if any) must be placed in an approved location consistent with grading reviews and required permits. (Section 410)
- D. Construction activities subject to requirements of Section 410 (Grading and Drainage) and Section 426 (Erosion Control) require submittal and approval of appropriate plans to Building Services prior to commencement of construction.
- E. Sign permits are required prior to installation of any signage on the site. Signage is subject to standards stipulated in Section 414.
- F. Applicant is responsible for obtaining applicable local, state, and federal permits for any disturbance within riparian corridors and *Water Areas and Wetlands*. (Section 422)
- G. Applicant is responsible for understanding and complying with the Washington County Noise Ordinance (Washington County Code of Ordinances Chapter 8.24 or as amended).
- H. Temporary construction staging areas are allowed within or adjacent to the project corridor and must be removed and returned to original use (as applicable) within 90 days of project completion. (Section 207-5)
- I. Storage of petroleum products, explosives, herbicides, pesticides, insecticides, poisons, defoliants, fungicides, dessicants, nematocides and rodenticide is prohibited within the flood plain. (Section 421)
- J. Upon decommissioning and/or deconstruction of the proposed facility, the subject site shall be replanted with native vegetation and restored to its pre-construction condition or better. All decommissioning and deconstruction is subject to applicable federal, state, and local agency regulations. (Section 207-5)
- K. This approval is based on the site plan stamped 'Preliminary Approval' in the casefile, and the uses described in this application. All approved uses and activities are limited to those described in this approval. Any changes to the approved plan or uses may require subsequent land use review and approval through the development review process. (Section 207-5)

Attachment C STAFF REPORT

I. APPLICABLE STANDARDS:

- A. Washington County Comprehensive Framework Plan (Rural/Natural Resource Plan Element)**
- B. Washington County Community Development Code:**
 - 1. Article II, Procedures:**
 - Section 202-2 Type II Procedure
 - Section 207-5 Conditions of Approval
 - 2. Article III, Land Use Districts:**
 - Section 340 EFU District Standards
 - Section 379 Mineral and Aggregate Overlay District
 - 3. Article IV, Development Standards:**
 - Section 403 Applicability
 - Section 410 Grading and Drainage
 - Section 421 Flood Plain and Drainage Hazard Area Development
 - Section 422 Significant Natural Resource
 - Section 423 Environmental Performance Standards
 - Section 426 Erosion Control
 - Section 430-105 Public Utility
 - 4. Article V, Public Facilities and Services**
 - Section 501-9 Limited Application of the Public Facility and Service Standards Outside the UGB

II. AFFECTED JURISDICTIONS

Tualatin Valley Fire and Rescue
Oregon Water Resources Department
Oregon Department of State Lands
Washington County Sheriff's Office

III. FINDINGS

Background

- 1. The applicant requests approval for a battery energy storage system (BESS) to be developed in conjunction with the sole PGE electric substation located in Sherwood. The applicant states the facility is integral to PGE's ability to meet the state mandated emission goals stipulated in Oregon House Bill 2021.
- 2. Oregon House Bill 2021 (Clean Energy Bill) was signed into law on July 19, 2021 and requires retail electricity providers that sell to Oregon consumers to meet greenhouse gas emission reduction goals of 80% below baseline emission levels by 2030, 90% by 2035, and 100% by 2040. The BESS would furnish electricity by providing a stored supply that can be accessed later: the proposed facility will provide a utility service to the regional electric grid by receiving energy (charging) from the PGE substation, storing the energy on site, and later discharging that energy back into the grid as needed.
- 3. The subject site is split zoned, lying partly within the City of Sherwood (west half supporting a home-improvement retail store, Home Depot) and partly within Washington County (east half that

4. The proposed facility will be a fenced and gated enclosure containing several lithium-ion energy batteries installed in racks within enclosures, inverters, switchgear, and other associated equipment to interconnect into the PGE substation operations in Sherwood, directly south of the subject site. The applicant states the batteries will be housed in containers that will be designed and installed in conformance with the nationally recognized National Fire Protection Association (NFPA) standards for Installation of Stationary Energy Storage Systems, as well as with state and County requirements. The facility will not be staffed and operations will be controlled remotely with periodically scheduled inspections and maintenance services. An interior eight-foot tall solid precast concrete wall will be constructed around the facility features, along with dense vegetated perimeter landscaping.
5. The applicant states that at the end of the operational term of the BESS, the site will be decommissioned or deconstructed in accordance with applicable federal, state and local agency regulations. Practices will be implemented to ensure collection and recycling of batteries with the intent to avoid the potential for batteries to be disposed of as municipal waste. All material will be deconstructed responsibly. The establishment of this facility does not preclude the ability of the land to be employed in agricultural use in the future.
6. House Bill 4015, effective June 2024, allows establishment of BESS facilities that (a) collect energy from an electric grid or energy generation facility; (b) uses rechargeable batteries to retain and store energy for a set period of time; and (c) discharges the stored energy to provide electricity as needed. Though the Bill allows the permitting of a BESS through the Energy Facility Siting Council (EFSC), an applicant nonetheless needs to demonstrate compliance with applicable land use standards of the jurisdiction where they are located. Washington County's Community Development Code (CDC/Code) does not expressly state that a BESS is a permitted land use. However, based on the information contained in the application materials, staff finds that a BESS can meet the definition of a public utility as permitted under Section 430-105 because of the similarity in nature of use and service provided. The facility proposed will consist of corporate-owned equipment for storage, furnishing, and transmission of electricity. It consists of equipment and structures within an enclosed area for storing, switching and regulating electricity demands at the PGE Sherwood electricity substation, and thereby the regional electricity grid. This interpretation is consistent with the purpose and underlying policy that provides the basis of this code standard. Section 430-105 is addressed later in this report. Further, the applicant's narrative addresses why it is necessary to site the facility in the EFU district, as discussed in Section 340 of this report.
7. The parcel was recently approved for a partition along the Urban Growth Boundary separating the EFU designated portion of land within Washington County from the Light Industrial zone designation within the City of Sherwood that supports Home Depot and associated improvements. The partition is yet to be recorded, and the applicant will be responsible for any adjustments or easements between the two discrete units of land that result from the partition. For further details, please refer to Casefile L2300203-P.
8. A sanitary sewer line extension into the City's Rock Creek trunkline was approved on the site via Casefile L9900552-SU/FP followed by creation of a ditch and wetland/detention pond for stormwater management via Casefile L0200351-FP/W. No alterations are proposed to either of these features.
9. The eastern portion of the site is located within the 100-year floodplain of Rock Creek; therefore, this development is subject to review under Section 421 which regulates development within the 100-year floodplain. Placement of all structures is proposed outside the delineated extent of the floodplain with the exception of a stormwater detention pond, proposed as an accessory feature of this development, that will partially encroach into the onsite floodplain. Accordingly, further review of the project under the standards of Section 421 are addressed later in this report.

10. No letters of comment were received in response to the public notice or prior to the completion of this report.

B. Comprehensive Framework Plan (Rural/Natural Resource Plan Element):

STAFF: The goals and policies that relate to the development of land are implemented by the code. The applicant is not required to address, consider, or implement any goal, policy or strategy of the plan except where required by the code.

According to the Rural/Natural Resource Plan map, the project is located in an area that is identified as *Water Areas and Wetlands* associated with the 100-year flood plain of Rock Creek on the eastern portion of the site. Also, according to Metro's Regionally Significant Fish and Wildlife Habitat Inventory Map, *Class I and Class II Riparian Habitat* corresponds with the flood plain on the site. Requests on land with identified significant natural resources are subject to the standards of Section 422, which requires the application of Plan Policy 10, Implementing Strategy E. The applicable plan policy is discussed under Section 422, later in this report.

C. Washington County Community Development Code:

1. Article II, Procedure:

Section 202-2 Type II

202-2.1 Type II land use actions are presumed to be appropriate in the District. Type II uses generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with these uses which may necessitate imposition of specific conditions of approval to minimize those impacts or ensure compliance with this Code.

STAFF: This application is being processed through the Type II procedure of the Community Development Code. Where appropriate, conditions of approval are imposed to ensure compliance with the standards of the code and other county regulations, and to minimize identified impacts upon surrounding properties. Public notice was mailed to nearby property owners and the applicant has submitted an affidavit stating that a public notice sign was posted on the site. No letters were received in response to the public notice or prior to issuance of this report.

Section 207-5 Conditions of Approval

207-5.1 The Review Authority may impose conditions on any Type II or III development approval. Such conditions shall be designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development. Conditions shall not restrict densities to less than that authorized by the development standards of this code.

STAFF: The applicant must comply with all of the applicable code regulations and departmental conditions, as listed in Attachment B of this report.

2. Article III, Land Use District:

Section 340 EFU District Standards

340-4 Uses Permitted Through a Type II Procedure

The uses listed in Section 340-4.1 and 340-4.2 are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code. Approval may be further conditioned by the Review Authority pursuant to Section 207-5. Unless the use is specifically exempted, the Review Authority shall make specific findings with respect to the standards in Section 340-4.3.

340-4.1 Permitted Uses which are exempt from Section 340-4.3:

- R. *Utility facilities necessary for public service, including wetland waste treatment systems. Utility facilities necessary for public service do not include: 1) Commercial facilities for the purpose of generating power for public use by sale; 2) Transmissions towers over two hundred (200) feet in height; 3) New Telecommunication Facilities listed under K. and L. above and under Section 344-5.2 L. below; 4) utility facilities exempt pursuant to Section 201-2, and 5) Utility facilities listed under S. below. A facility is necessary if it must be situated in an agricultural district in order for the service to be provided. For required standards, see Sections 430-105.3 through 430-105.7. Application findings must demonstrate compliance with ORS 215.275 (Utility facilities necessary for public service).*

STAFF: Section 340-4.1 R. permits the battery energy facility through a Type II procedure. This facility is part of a larger electricity grid that includes the substation which the proposed project will serve. The applicant states the facility will provide a service to the regional electric grid by receiving energy from the Sherwood substation, storing energy on site, and later discharging the energy back to the substation when needed. Section 430-105 is addressed later in this report.

This proposal is also subject to the criteria of ORS 215.275, which require that the applicant must show that it is necessary to situate the facility in the EFU District in order for the service to be provided. The criteria of ORS 215.275 are outlined as "the necessary criteria," addressed below.

The Necessary Criteria

1. This application is subject to review pursuant to relevant case law. In *McCaw Communication, Inc. v. Marion County*, 96 Or App 552 (1989), the court found that the siting of a "utility facility" was dependent on the term "necessary." The court found that local ordinances defining non-farm uses which are permitted in exclusive farm use zones must be read together with state policy of protecting farm land (ORS 215.243). The Court of Appeals stated, "the phrase means a facility that is necessary to situate the facility in the agricultural zone in order for the service to be provided" (staff emphasis).

With "utility facilities," the court held that there is a relationship between "necessary" and the "proposed location of the use on land zoned for agriculture." The court concluded that in order to site a "utility facility" in an exclusive farm use zone (in this case EFU) "the applicant must establish and the County must find that it is necessary to situate the facility in the agricultural zone in order for the service to be provided."

2. The decision in *Clackamas County Service District No. 1 v. Clackamas County*, LUBA No. 98-047, further defines the extent of information an applicant must submit for utility facilities in exclusive farm use zones. In that decision, the board found that an applicant must demonstrate why it is necessary to site the facility in an exclusive farm use district as

opposed to other districts, and found that it is not sufficient to demonstrate only that such a site is more feasible. Accordingly, an applicant must describe those conditions or factors which would prevent siting a utility facility on a non-resource district property.

3. In an effort to provide guidance regarding the interpretation of the "necessary" criteria, the State Legislature adopted House Bill 2865 in 1999. HB 2865 amended ORS 215.213(1)(d) and 215.283(1)(d) to provide a definition in state law of the term "necessary." This application is subject to the amended requirements of OAR 660-033-130 (16) and ORS 215.275. Staff's findings regarding the necessary criteria for this request are listed below.
4. The proposed utility facility may be sited in an exclusive farm use zone if one or more of the criteria found in ORS 215.275 discussed below, are met.

(1) A utility facility established under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(c)(A) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (1)(c)(A) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(c)(A) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (1)(c)(A) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

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

(c) Lack of available urban and non-resource lands;

(d) Availability of existing rights of way;

(e) Public health and safety; and

(f) Other requirements of state and federal agencies.

According to the applicant, the project must be situated within the EFU District for the following reasons:

Technical and engineering feasibility: This factor did not influence the siting of the proposed project in the EFU district.

The proposed facility is locationally dependent: "This is the primary factor driving the need to locate the project at the proposed site. For effective deployment of the battery energy storage technology, proximity to the point of interconnection [in this case the Portland General Electric (PGE) Sherwood substation] is the primary criterion. The further away a project is situated from the interconnecting substation, there is a greater overall project footprint, greater project costs, and greater electrical loss due to resistance in the power lines. Therefore, for a battery energy storage facility to function efficiently, to reduce transmission and distribution losses,

and result in greater electricity retention, it must be within an approximately 1-mile radius of the substation.

Staff agrees the above findings support the conclusion that the proposed battery energy storage facility is locationally dependent from a reasonably direct route and unique geographic need perspective.

Another important factor is the size of the parcel. In order to review potential siting locations, the applicant explored parcels approximately 10 acres or larger given the size of the battery containers, need for access roads for internal circulation, and placement of transformers and other infrastructure.

Thus the size of the parcel and intervening distance to the substation were determining factors for the applicant to site the battery energy storage facility.

Lack of available urban and non-resource lands: The applicant provided an illustration (Figure 2 of the applicant's submittal) showing the parcels evaluated as a potential siting location for the battery energy storage facility within one mile of the subject site. Approximately half the properties lie within farm/forest resource lands. Urban and non-resource lands within the study area were evaluated individually and the results were presented on pages 2 to 6 of the applicant's memorandum (dated April 2024).

According to the application materials, analysis of surrounding properties identified 46 parcels that were 10 acres or larger within a 1-mile radius of the substation. Land uses for these parcels included AF-20, EFU, and FD-20 within Washington County, and parcels within the City of Sherwood that consist of residential, industrial, commercial, and institutional uses. When EFU designated parcels were excluded, 27 parcels over 10 acres remained as viable options. Of these 27, 4 parcels were high density residential, 5 parcels supported existing commercial facilities, and 3 were existing educational/institutional facilities. These were eliminated from further consideration due to impacts resulting from displacing the existing uses and infrastructure. Of the remaining 14 parcels, two occur in the AF-20 district almost entirely within a 100-year flood plain, support active farm uses, and are located farther away from the substation than the subject parcel. Another four parcels lie within the General Industrial and Light Industrial zoning within the City and were viable alternatives. However, there were manufacturing uses established on the lands and the unused portions were either designated flood plain or supported transmission lines that reduced the usable space to less than 10 acres. The other properties were either farther away, almost one mile from the site, were mapped within flood plain, supported farm uses and creeks that significantly limited the space available for establishing the facility to less than 10 acres, or had to cross other farm resource designated properties in order to establish transmission lines that connect the storage facility to the substation. Further, of the alternatives considered, several owners were unwilling to sell or lease their properties for the facility. After evaluation of all the non-EFU zoned parcels that were conducive to developing the proposed facility, the owners of the single parcel that met all the criteria were not willing to sell or lease the property to the applicant.

The above discussion supports the conclusion that it is necessary for the proposed facility to be located in the farm zone.

Availability of Existing Right-of-Way: According to the applicant, this factor reflects a preference for placing new linear facilities in existing rights-of-way, as opposed to creating a new right-of-way. The applicant proposes the transmission lines over the west half of the subject site, traveling west along the south property line and crossing over SW Langer Parkway before entering the PGE substation site. This route will allow the energy storage site to connect seamlessly with the Sherwood PGE substation using the shortest connection possible. A utility easement is required for all portions of the connection that will occupy a

footprint on any offsite property it crosses, as conditioned in Attachment B of this report. The connections will be either overhead via poles or underground.

Public health and safety: The applicant states this factor did not influence the siting of the proposed development. Staff adds that the proposed location minimizes any disruptions to most existing uses in the area during construction, operation and decommissioning of the proposed facility. The structures associated with the facility will be located outside the floodplain, except the stormwater drainage system that will comply with applicable standards for development within a flood plain when constructed in accordance to the conditions of approval. Properties to the north, east and south are a combination of residential and agricultural uses; there are no such uses on the subject site. Health and safety issues pertinent to construction are required to follow County and any other applicable jurisdiction's codes and ordinances for noise, light, and vibration. These elements are also addressed in response to environmental performance standards in Section 423. Construction will operate according to an approved access permit; dust and erosion will be controlled based on an approved erosion and sediment control plan and according to the program's 1200-C permit.

(3) Costs associated with any of the factors listed in subsection (16)(a) of this rule 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 that are not substantially similar

Pursuant to this requirement, factors beyond cost were used in examining the alternatives. Specific factors considered in the analysis included impacts to existing uses, availability of land, size of the parcel, proximity to the substation, impacts to resource lands, natural resource impacts, system reliability, efficiency of integration with the substation, schedule, and overall cost.

Staff concurs with the applicant's conclusions, that cost was not the only factor for siting the facility.

(4) The owner of a utility facility approved under ORS 215.213 (1)(d) or 215.283 (1)(d) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

The EFU land proposed for development lies within an urban reserve and no existing agricultural uses currently occur on site. Adjoining properties to the north, east, and south support small farm and residential uses and lie within the farm resource EFU District. The application states the subject site was historically farmed up to the 1970s but there have been no active agricultural uses for almost five decades. Once the subject site is no longer operational as a utility facility, the applicant proposes to decommission and deconstruct the facility and to restore the site to its former or better conditions by installation of native plantings throughout the site. Staff notes the proposed development does not preclude the ability of the property to be engaged in future agricultural uses and believes this standard is met with the inclusion of the site reclamation proposal as a condition of approval in Attachment B. Impacts to adjoining farmed parcels is not anticipated during construction or operation of the facility as discussed below.

(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)(d) or 215.283 (1)(d) 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.

This standard is similar to the standard imposed by ORS 215.296 and is also similar to the standard in CDC Section 340-4.3, which implement that statute. The applicant states impacts to adjacent farmland or agricultural uses in the area are not anticipated. Specific practices will be implemented during construction and operation to minimize potential impacts on soil, crops, harvesting and other related activities. These include prompt removal of construction and operational debris, coordinating with neighboring farms with construction schedule and major maintenance activities during the life of the project to avoid disruption to agricultural operations or traffic, weed control and containment, implementing appropriate dust and erosion/sediment control measures both during construction and operation of the project, and limiting the amount of hazardous material stored on site, including diesel fuel, gasoline, and similar fluids. Appropriate spill prevention, containment, and cleanup plan and kits will be maintained on site during construction and operation of the facility. The riparian area to the east of the project area buffers the farm uses to the east. Further, dense vegetation will be installed along the property lines to ensure adequate separation and screening of the energy storage facility from the surrounding farm uses. Traffic generated during operation of the facility is minimal, potentially limited to a weekly maintenance trip. Thus, the applicant states the proposed use will not result in a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding lands. The proposed use does not preclude the ability of the property to be farmed in the future when the BESS is decommissioned. No letters of comment were received in response to the public notice for this development, which staff believes indicates a lack of significant opposition to the project. Approval of this request is subject to the conditions of approval listed in Attachment B of this report, which are clear and objective.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. [1999 c.816 §3]

STAFF: This is not a request for an interstate natural gas pipeline and/or associated facilities.

Staff concludes that the applicant has demonstrated that the facility is locationally dependent, is necessary to provide public service and that it must be located within the EFU district "in order to provide service". Furthermore, staff concludes that since the applicant has demonstrated compliance with the requirements of ORS 215.275, the applicant has satisfied the requirements of both the *McCaw* and *Clackamas County* cases (described above), and compliance with the necessary criteria required by Community Development Code Section 340-4.1 R.

340-6 *UGB Proximity Standards*

STAFF: No enclosed structure with a design capacity greater than 100 people, or a group of enclosed structures with a total design capacity of greater than 100 people is proposed.

340-9 *Dimensional Requirements*

STAFF: All proposed structures will meet the setback requirements of the EFU District. Final compliance shall be confirmed through the building permit process. No dwellings or accessory structures are proposed, hence the height requirements do not apply. Based on submitted information, no structure will exceed 35 feet in height.

340-10 Access

STAFF: The subject site has frontage to SW Pacific Highway along the west property line. Staff notes that the subject site was approved for a partition via Casefile L2300203-P. Once recorded, the EFU portion of the subject site will be a discrete landlocked parcel. Access to the EFU parcel that will host the proposed development is proposed via SW Pacific Highway utilizing a public access easement to the north. The applicant is required to provide evidence of this easement during the grading/building permit review process.

Section 379 Mineral and Aggregate Overlay District

379-10 Uses Permitted Through a Type II Procedure in District B

The following uses are permitted subject to the applicable standards as set forth in Article IV.

- 379-10.1** *Noise sensitive uses allowed through Type I and Type II procedures in the primary land use district subject to the applicable standards in Section 379-14.*
- 379-10.2** *Uses otherwise permitted through a Type II procedure in the primary land use district.*
- 379-10.3** *The affected quarry operator and quarry owner shall be notified of Type II actions pursuant to Section 204-4.*

STAFF: The subject parcel partially lies within the District B overlay of the mineral and aggregate resource district associated with a District A Overlay to the northwest of the site. However, there is no active mining within the District A designation and the area is preserved as the Tualatin River National Wildlife Refuge and Beef Bend Natural Area. The District B designation overlays the western half of the subject site and the northwestern portion of the proposed development area.

As stated in the standards above, the use is a Public Utility that is permitted in the EFU district via a Type II Procedure. It is not a noise sensitive use as defined in Chapter 8.24 of the noise ordinance, and hence standards of Section 379-14 do not apply. The proposed development does not require further review pursuant to this Section.

3. Article IV, Development Standards:

Section 403 Applicability

403-2 Master Plan - Minimum Requirements for all Development

STAFF: A master plan meeting the requirements of this section was submitted; a copy is in the casefile.

403-4 Additional Standards Outside the UGB

STAFF: Section 403-4 specifies how the development review criteria of Article IV apply to development requests on land outside of the UGB. Section 403-4 has been used to identify the applicable development standards listed in this report.

Section 407 Landscape Design

STAFF: The applicant proposes vegetated hedging around the perimeter of the project area (Applicant's Landscape Plan L1). According to the applicant, the project has been designed to landscape 15% of the project footprint excluding the floodplain area which will not be developed except for a vegetated stormwater tract. Densely vegetated landscaping around the perimeter of the project area consists of native and street trees, shrubs, and perennial ground cover. Landscaping is required prior to final approval of building permits, as conditioned in Attachment B of this report. Staff finds the proposed landscaping meets the requirements of this section.

Section 409 Private Streets

STAFF: The project area will support internal roads in excess of 150 feet in length for vehicular circulation onsite. Hence these streets are subject to review per this section. Drainage requirements, and compliance of these internal streets with the Oregon Fire Code will be reviewed by the Fire District (in this case Tualatin Valley Fire and Rescue District) and the County Building Engineer during grading and building permit review process (conditioned in Attachment B).

Section 410 Grading and Drainage

STAFF: As discussed previously in this report, the applicant requests approval for a battery energy storage system which is a utility facility necessary for public service in the EFU District. The applicant has submitted preliminary grading plans to meet the requirements of this section.

Certain grading activities may be exempt from permit requirements. However, any grading whether exempt or not must be for a use permitted in the EFU District. Grading must be preceded by approval of grading, drainage, and erosion control plans through the grading/erosion control permit process. Pursuant to Section 410-1.2, the applicant shall submit necessary plans for review by the county Building Engineer and shall obtain grading/erosion control permits prior to any grading/construction activities (conditioned in Attachment B). Excess soils from the project, if any, must be placed at an approved location subject to grading review and permits.

Regarding water quality outside the UGB, OAR Chapter 340, Division 41 (concerning phosphorus removal), applies to all development outside of Clean Water Services jurisdictional boundaries. Applicable standards are addressed during review of the grading permit.

Section 411 Screening and Buffering

STAFF: This section does not include specific screening/buffering measures for rural development. Typical application of screening/buffering requirements would be to screen a proposed commercial use from view of surrounding residential or farmed properties. In this case, the proposed energy storage facility will be created in the rear (east) portion of the subject site, well within the boundaries of the property. To the north, east and south are farm zoned properties, most of which support active farming operations. To the west lie commercial and industrial properties within the City of Sherwood. Staff finds that screening the project area from adjoining properties is warranted. The applicant proposes dense vegetated landscaping along the perimeter of the proposed facility, as shown in the submitted landscape plan (Applicant's Exhibit L1). The applicant also intends to install an interior screening eight-foot tall precast concrete wall around the facility features as shown in the preliminary site plan (Applicant's Exhibit P-1(a)). Staff finds the proposed wall and dense planting will adequately screen and buffer the facility from surrounding uses and properties, and this requirement is included as a condition of approval in Attachment B.

Section 413 Parking

STAFF: Operations at the site will require occasional maintenance visits, no more than once a week requiring a maximum of two to three vehicles. Parking has not been shown on the site plan, but the applicant has communicated to staff that a parking area to account for at least three (3) parking spaces is designated in the northwest portion of the site.

Section 415 Lighting

STAFF: Lighting will be installed to provide operations and maintenance personnel with illumination for both normal and emergency conditions. Motion sensor security lighting will be installed, and all lighting will be directed downwards and shielded to avoid glare on to neighboring properties.

Section 421 Flood Plain and Drainage Hazard Area Development

421-5 Uses and Activities Allowed Through a Type II Procedure

421-5.6 Water quality or quantity improvement facilities, or a required wetland mitigation project

STAFF: The applicant proposes a stormwater runoff detention pond to be constructed within the floodplain. This feature is proposed in conjunction with a battery energy storage system facility that is located on the same parcel of land but outside the floodplain. The feature has been designed to accommodate a volume of approximately 48,854 cubic feet , and to ensure a balanced cut/fill within the floodplain.

Based on the submitted information (Applicant's Memorandum dated August 2024), the County Flood Plain Manager has indicated that the development within the flood plain can meet all requirements of Section 421 when compliant with the conditions of approval in Attachment B of this report.

421-7 Development Standards for all Type II and Type III Flood Plain and Drainage Hazard Area Uses or Activities

The applicant for a proposed flood plain or drainage hazard area development shall demonstrate compliance with the following applicable standards as required by Section 421-3 above:

421-7.1 Development proposed to encroach into a regulatory floodway.....

421-7.2 Notwithstanding Section 421-7.1, development that would result in an increase in flood levels.....

STAFF: The project will not encroach into a regulatory floodway; this standard does not apply.

421-7.3 Development proposed on a floodplain site where the development does not encroach into an adopted FEMA regulatory floodway shall demonstrate through hydrologic and hydraulic analysis, performed in accordance with standard engineering practice by a licensed professional engineer, that the cumulative effect of the proposal, when combined with all other existing and anticipated development within the basin based upon full development of the basin as envisioned in the applicable Community Plan or the Rural/Natural Resource Plan, will not increase flood levels in the event of a base flood discharge more than 1 foot.

STAFF: The applicant is required to provide the above analysis as conditioned in Attachment B of this report. According to the application materials, as proposed, the project will not result in an increase in flood levels.

421-7.4 *In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within flood areas on the Flood Insurance Rate Map (FIRM), unless it is demonstrated through hydrologic and hydraulic analysis, performed in accordance with standard engineering practice by a licensed professional engineer, that the cumulative effect of the proposal, when combined with all other existing and anticipated development within the basin based upon full development of the basin as envisioned in the applicable Community Plan or the Rural/Natural Resource Plan, will not increase flood levels during the occurrence of a base flood discharge more than 1 foot.*

STAFF: A regulatory floodway is designated in the area but lies outside the project site.

421-7.5 *Notwithstanding Section 421-7.3 and 421-7.4, an increase in flood levels in excess of 1-foot.....*

STAFF: According to the applicant, the proposed development will not result in an increase in flood levels.

421-7.6 *Development proposed on a drainage hazard area.....*

STAFF: There are no mapped drainage hazard areas on the subject site.

421-7.7 *Encroachments into a floodway.....*

STAFF: There are no mapped floodways on the subject site.

421-7.8 *The proposal will not increase the existing velocity of flood flows so as to exceed the erosive velocity limits of soils in the flood area. Energy dissipation devices or other measures to control the mean velocity so as not to cause erosion of the flood area may be used to meet this standard. "Open Channel Hydraulics" by V. T. Chow, McGraw-Hill Book Company, Inc., 1988, is presumed to be the best available reference for maximum permissible velocity. "Hydraulic Engineering Circular No. 14," Hydraulic Design of Energy Dissipators for Culverts and Channels, published by the Federal Highway Administration, September 1983, is presumed to be the best available reference for the design of energy dissipators.*

STAFF: The applicant states that the proposed storm detention pond has been designed to maintain the base flood elevation of the 100-year floodplain and would not increase the velocity of flood flows. The applicant is required, as conditioned in Attachment B, to provide a registered engineer certification that no net increase in flood velocity occurred as a result of the final construction.

421-7.9 *All cut and fill shall be structurally sound and designed to minimize erosion. All fill below the flood surface elevation shall be accompanied by an equal amount of cut of storage within the boundary of the development site unless:*

A. *The proposed cut and fill is found to be in compliance with an adopted drainage management plan; or*

B. Off-site excavation will be utilized to balance a fill, provided:

STAFF: According to the applicant's information, the proposal is designed to result in balanced cut/fill so that the new floodplain storage remains unchanged and will minimize erosion. The development proposes a total cut of 667 cubic yards and total fill of 657 cubic yards, thus net fill is not anticipated through this proposal. The applicant is required, as conditioned in Attachment B, to provide an engineer certification that no net fill occurred and no flood storage was lost as a result of the final construction.

421-7.11 *That the environmental impact of the disturbance or alteration of riparian wildlife and vegetation has been minimized to the extent practicable as required by Section 422. Enhancement of riparian habitats through planting or other such improvements may be required to mitigate adverse effects. Significant features such as natural ponds, large trees, and endangered vegetation within the flood area shall be protected when practicable.*

STAFF: The applicant is requesting approval for a water quality pond within the floodplain. Though some of the existing habitat will be displaced, the water quality pond and associated vegetation will also serve as a habitat for a variety of wildlife, including birds, amphibians, and invertebrates. According to the application materials, there are no endangered species or native plants within the flood area on the subject site, and no natural ponds or large trees are being affected by the development. Further, the majority of the onsite floodplain remains unaffected by the water quality pond; approximately half the water quality pond will encroach into the floodplain, and no more than a quarter of the onsite floodplain is being developed into a water quality swale. Staff finds the proposal minimizes encroachment into the flood plain and its impacts to onsite riparian resources to the extent practicable.

421-14 *General Requirements and Prohibitions*

STAFF: No additional activity within the floodplain is proposed following completion of the project, and a reduction in the carrying capacity of the 100-year floodplain is not anticipated.

No storage of prohibited materials is proposed in the flood plain. No solid waste will be dumped in the project area and the introduction of fill material is not proposed. All permits will be obtained prior to commencement of work and copies of permits acquired from all state and federal agencies will be forwarded to Washington County.

The applicant has indicated that all required permits/exemptions will be obtained from applicable local, state, or federal agencies prior to commencement of the project. The applicant is also required to obtain a grading permit from Washington County, as stipulated in Attachment B.

Section 422 *Significant Natural Resources*

422-3.1 *The required master plan and site analysis for a site which includes an identified natural resource shall:*

- A. *Identify the location of the natural resource(s), except in areas where a Goal 5 analysis has been completed and a program decision adopted pursuant to OAR 660, Division 23 (effective September 1, 1996):*

STAFF: According to the Rural/Natural Resource Plan Map, there are *Water Areas and Wetland* associated with the 100-year flood plain of Rock Creek on the eastern half of the subject site. Rock Creek is mapped flowing offsite, over 700 feet to the east. According to Metro's Regionally Significant Fish and Wildlife Habitat Inventory Map, *Class I and Class II Riparian Habitat* are associated with the onsite flood plain. The applicant has provided findings relevant to Section 422 in the Project Description (Applicant's Attachment 5), a Biological Resources Report (Applicant's Attachment 11), and a Wetland Delineation Report (Applicant's Attachment 12).

The western half of the subject tax lot lies within the City of Sherwood, does not support mapped resources, and is employed in commercial use. The eastern half is undeveloped, generally supporting grass and vegetation appropriate for pasture. Dense thickets of blackberry are present, with some trees along the northern edge of the property. According to the applicant, given the presence of non-native vegetation and the disturbed nature of the site generally, suitable habitat to support listed plant or wildlife species are not present onsite. The easternmost part of the property supports floodplain and riparian habitat associated with Rock Creek as identified above. A stormwater pond is present in the northeastern part of the project area and will not be impacted by the proposed development.

Field studies by the applicant identified a single horse-shoe shaped wetland in the northeast part of the parcel and a ditch running east to west along the north property line of the parcel. The drainage channel and stormwater ponds were constructed for use by the developed portion of the site. The applicant states the onsite drainage ditch and stormwater pond were acknowledged by the Oregon Department of State Lands and the US Army Corps of Engineers as non-jurisdictional and exempt from state Removal-Fill law.

- B. *Describe the treatment or proposed alteration, if any. Any alteration proposed pursuant to Section 422-3.1.B shall be consistent with the program decision for the subject natural resource; and*

STAFF: This application is for operating a battery energy storage system in conjunction with the PGE Sherwood substation south of the subject site. All structures associated with the battery energy storage system and its accessories, including driveways, will be located outside the resource areas. The resources will be impacted in a limited manner by the encroachment of a portion of the proposed water quality pond into the floodplain and associated Title 13 areas. The project design avoids impacts to the existing stormwater ditches and pond. Most of the impacts associated with *Water Areas and Wetland* are addressed in Section 421 that implements development criteria for permitted uses within a 100-year floodplain. Regarding the Metro Title 13 *Class I and II Riparian Habitat* onsite, most of the existing habitat will be retained. A portion of the riparian habitat will be replaced by the water quality swale and associated vegetation.

- C. *Apply the design elements of the applicable Community Plan; or the applicable implementing strategies of the Rural/Natural Resource Plan Element, Policy 10, Implementing Strategy E which state:*

"Implement the recommendations of the Oregon Department of Fish and Wildlife Habitat Protection Plan for Washington County and to mitigate the effects of development in the Big Game Range within the EFU, EFC and AF-20 land use designations.

STAFF: Plan Policy 10, Implementing Strategy E, applies to fish and wildlife resources. Implementing Strategy E requires the county to implement the recommendations of the Oregon Department of Fish and Wildlife's (ODFW) "Habitat Protection Plan for Washington County."

The *Water Areas and Wetland* and Metro Title 13 *Class I and II Riparian Habitat* designation applies to the area within and near Rock Creek. The Habitat Protection Plan considers rivers and streams to be within the category of Water Areas and Wetlands. The plan's protection policies for such features are as follows:

- 1) Residential development along streams should be low density;
- 2) Require appropriate setbacks
- 3) Prohibit construction of "vulnerable" structures in the flood plain;
- 4) Maintain riparian vegetation;
- 5) Restrict stream alterations; and

- 6) Road crossings, bridges, etc, should avoid restricting channel capacity and minimize removal of vegetation.

The applicant is requesting approval for constructing a stormwater detention pond partially within mapped habitat as described earlier. The construction involves some impacts to the delineated natural resources, which is minimized to the extent practicable. No residential development or structures are proposed within the floodplain. No alterations are proposed to the Rock Creek stream channel which flows approximately 700 feet offsite. Road crossings, bridges, or similar alterations are not proposed. Staff finds that the proposal is consistent with all the recommendations of the Habitat Protection Plan concerning rivers and streams.

Based on the above analysis, staff finds that the applicant's proposal is in compliance with the requirements of Plan Policy 10, Implementing Strategy E.

422-3.6 *For any proposed use in a Significant Natural Resource Area, there shall be a finding that the proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated. This section shall not apply in areas where a Goal 5 analysis has been completed and a program decision has been adopted that allows a "conflicting use" to occur pursuant to OAR 66023040(5)(c) (effective September 1, 1996):*

STAFF: Based on information included within the application, staff finds there is no expectation of permanent loss of resource acreage, quality, or functions. The proposed project will result in planting of more trees on site than exists currently in the form of perimeter landscaping, thus providing some future upland habitat suitable for wildlife. While the drainage swale will partially encroach onto the floodplain and riparian habitat, no more than a quarter of the onsite resources will be affected. Further, the stormwater pond, when designed with vegetation, will provide additional habitat for wildlife, particularly insects, small mammals and birds. The habitat benefits will be similar to constructed ponds and wetlands. The applicant states that all vegetation removal and ground disturbing activities within the resource area will occur outside the nesting season (generally February to August) to avoid potential impacts to nesting birds. If development occurs during nesting season, the area will be surveyed by a qualified biologist to ensure a 50-foot buffer (250-feet for raptors) is maintained during the nesting cycle. Erosion control measures during construction will further ensure impacts from runoff are minimized during construction. Once decommissioned, all features associated with the facility will be removed and native vegetation will be planted or seeded, as appropriate, and as conditioned in Attachment B. Staff finds that this standard is met.

Section 423 Environmental Performance Standards

STAFF: The county requires the proposed development to comply with all applicable DEQ and county environmental standards pertaining to noise, odor, drainage, wastewater, and storage. There will be no open storage of material and equipment as part of the proposed use (other than during the construction period). According to the applicant, during operation, the proposed facility will not emit pollutants or odors. The applicant has submitted a noise study (Attachment 10 of the application materials) which identifies the following as a source of noise during the operation of the facility: cooling fans, transformers, and vehicular activity to and from the site. The study concludes that these sources would not result in the generation of substantial increase (temporary or permanent) in ambient noise levels that are in excess of acceptable or established noise standards established by the County or other agencies. The applicant is responsible for ensuring compliance with the Washington County Code Chapter 8.24: Noise Ordinance, as conditioned in Attachment B of this report. The proposed use will not generate vibrations perceptible beyond the project area, nor will it produce heat and glare. Permanent motion-sensor security lighting will be installed to illuminate the yard and ingress/egress. All lighting will be shielded and directed downward to minimize potential of glare or spill over onto adjacent properties and habitat. Regarding waste, the applicant states that some waste will be generated due to maintenance activities which will be collected

onsite within enclosed dumpsters and taken offsite at regular intervals. A solid interior concrete wall will be installed around the facility features for safety and security, and will remain in place while the facility is in operation. Screening and buffering requirements are discussed earlier in Section 411 of this report and conditioned in Attachment B of this report. Stormwater and drainage management will be reviewed during the grading/building permit review process. The applicant states that sanitary facilities are not required onsite since wastewater will not be generated. Water is required for maintenance of landscaping and for fire emergencies and may use the onsite well. The application includes a service provider letter from the District 18 Watermaster indicating adequacy of existing groundwater levels to serve the proposed development.

When constructed in accordance with the conditions of approval, this request complies (or can comply) with the requirements of this section.

Section 426 Erosion Control

STAFF: The Building Engineer has determined a grading permit is required. Erosion control plans may be deferred until a grading permit is obtained. Erosion control and drainage requirements will be reviewed via the grading permit process and must conform to Chapter 14.12 of the Washington County Code, as conditioned in Attachment B.

Section 430-105 Public Utility

Any corporation, including municipal or semi-municipal corporation, service district, company, individual, or association that owns or operates any plant or equipment for the conveyance of telegraph or telephone messages, with or without wires; for the transportation of water, gas, or petroleum products by pipeline; for the production, transmission, delivery or furnishing of heat, light, water, or electricity; for the transmission and delivery of television pictures and sound by cables; for the transportation of persons or property by street, railroads or other street transportation or common carriers; for the disposal of sewage; or for the disposal of storm water runoff.

- 430-105.3 *A public utility service facility includes buildings, structures, and equipment within a fenced or otherwise enclosed area for the purpose of switching, regulating, or controlling public utility services.*
- 430-105.4 *Approval of a public utility shall be based upon a study submitted by the applicant which includes:*
- A. The need for the facility, present or future; and how the facility fits into the utility's Master Plan; and*
 - B. The minimum area required for the facility for the present and anticipated expansion.*
 - C. What measures will be used to minimize damage to paved roads and natural resources or open space.*

STAFF: The proposed development is a battery energy storage system intended to work in conjunction with a utility provider (PGE substation in Sherwood) helping stabilize and provide electricity in times of need. The facility is not specifically listed as a permitted use in the EFU district or within this section of the Code since the concept of a BESS is fairly new and zoning ordinances have not been updated to specifically address it as a new form of land use. Energy storage systems are evolving to meet increasing demands for renewable energy integration and grid stability. As stated in the findings earlier, the proposed use is substantially similar to a public utility in the nature of use and service provided. A BESS may be categorized as a 'public utility service facility' and includes buildings, structures, and equipment within an enclosed area for storage and regulation of electricity. The BESS serves to balance energy availability and demand by storing surplus

(charging) energy during periods of low demand and releasing it (discharging) to generate electricity during times of peak demand, power outages and grid balancing, thus serving to regulate demands within the regional electricity grid. These storage systems also provide benefits such as frequency regulation and voltage support. The proposed subject facility will be owned by a corporation and be used to store and furnish electricity for transmission in times of need to the PGE electric substation in Sherwood. The BESS will connect to the grid through distribution lines linking to the PGE substation.

According to the applicant, the proposed development will assist Oregon in meeting the requirements of Oregon's Clean Energy Bill (House Bill 2021) which has set a greenhouse gas emission reduction goal of 80% by 2030, 90% by 2035, and 100% by 2040 for retail electricity providers. PGE's 2023 Clean Energy Plan and Integrated Resource Plan (IRP) targets this goal by gradual reduction in fossil fuel generated electricity and substituting it with non-emitting energy resources. However, fossil fuel electric generators provide much needed dispatchable capacity and reliability to the grid that cannot be replaced by renewable resources such as wind or solar power since these are intermittent sources due to prolonged weather events that inhibit wind and solar generation, as exhibited in recent years. A reliable grid must be resource adequate with enough capacity and reserves to maintain balanced energy supply and demand during peak energy needs at any time and under all weather conditions. For the above reasons, PGE plans to replace fossil fuel with renewable resources and battery storage (that can offer finite energy storage) and requires geographic and resource diversity. The IRP states that there is no path to an 80% reduction in emissions by 2030 without using a significant buildout of non-emitting energy storage and renewable resources. The proposed development would contribute to PGEs identified need for an energy storage system that serves the Sherwood PGE substation and that meets State goals in fossil fuel emission reduction.

This proposal is subject to the precedents set by the *McCaw* and *Clackamas County* cases, OAR 660-33-130 (16), and ORS 215.275 (addressed earlier under Section 340). Those cases establish that the applicant for a public utility must show that it is necessary to situate the facility in the EFU District in order for the service to be provided.

According to the applicant, the proposed location for the battery energy storage facility was selected based on an alternatives analyses, included within the narrative of the application materials and discussed previously in this report. As described in the application materials, placement of the facility is locationally dependent and must be situated in the proximity of the Sherwood PGE substation. The minimum 10-acre area needed for the proposed facility is due to several factors. The primary factor is the Oregon Fire Code and National Fire Protection Association (NFPA) Section 855, *Standard for the Installation of Stationary Energy Storage Systems*, requires spacing between the BESS modules that necessitates a minimum 10+ acres for a 200-megawatt project such as the one proposed. A general rule of thumb, according to the applicant, is approximately 0.05 acre minimum for every megawatt of BESS, thus requiring the 10 acres for the proposed development. In addition, codes and standards require space for internal access roads and stormwater improvements, contributing to the overall acreage. A facility that entails multiple smaller sites is not feasible because there would be a need to have a separate, secondary collection line which would result in additional impacts to land, existing uses, and cost. Smaller projects are also less efficient from an overall impact standpoint as they require similar transmission upgrades, an onsite collector substation, and other ancillary features while providing less storage, as well as being less cost effective for the utility. Further, for the proposed facility, there were no willing landowners in the vicinity to support a 'multiple smaller site' approach. When factoring in required setbacks, smaller sites also become less feasible.

Operational activities associated with the proposed development are limited, hence traffic to and from the site is expected to be nominal. Typical operations and maintenance activities include liaison and remote monitoring, administration and reporting, semiannual and annual services, weekly maintenance visits such as equipment inspections, monitoring and testing, security,

landscaping, remote operation of inverters and site security. Batteries and other components will be replaced or renewed periodically to ensure optimal operation.

Staff finds that the proposed battery energy storage facility and its construction activities will utilize the minimum area required for the facility. Based on the above findings and the information in the casefile, staff concludes that the request complies with the requirements of Sections 430-105.4 A and B.

The applicant is required to implement a construction management plan (as part of the grading/erosion control permit) that will define measures to minimize damage to paved roads and to be finalized with the contractor and with the county. The plan will address construction activities and will specify that paved roads will be restored to their pre-project condition or better, consistent with county requirements.

The applicant's response to Section 422 addresses how the project will minimize impacts to natural resources.

Conditions in Attachment B will ensure the applicant completes the necessary measures.

430-105.5 Site size and yard shall be based upon a site plan submitted by the applicant. The site plan shall consider especially, the compatibility of the facility with existing surrounding uses and uses allowed by the plan designation.

STAFF: The applicant has submitted a site plan meeting the above requirement. Given the passive nature of the proposed use, the battery energy storage facility will be compatible with existing surrounding uses. Farm operations, residential uses, and industrial/commercial facilities surround the project site. The facility will generate little to no traffic, nor will it generate excessive noise (see findings under Section 423 earlier in this report). The facility proposes no such human activity to disturb residents or other uses in the area. The applicant proposes a eight-foot tall solid wall and dense vegetated landscaping around the project site that will screen the proposed facility from surrounding uses. In terms of compatibility with uses allowed in the EFU district, the project site is not actively farmed and will be returned to preexisting or better conditions upon decommissioning of the energy storage system. Compatibility of the facility with surrounding uses has also been addressed earlier in this report. Following this facility use and restoration, farming uses would still be possible on the subject site. No letters of comment were received during the public notice period indicating at a minimum that neighbors in the area do not have any significant concerns related to the proposed development. This standard is met.

430-105.6 Exemptions from the Requirements of Section 430-105:

Exempted from these regulations are:

- A. Underground pipes and conduits except where such Pipes or conduits would introduce an urban service outside the Urban Growth Boundary.*

STAFF: The proposed development does not meet the criteria for an exemption.

4. Article V, Public Facilities and Services

Section 501 Public Facility and Service Requirements

STAFF: In the rural area (outside the UGB), the county applies the Public Facilities and Services Standards in a limited way. The impacts on schools, fire and police protection, and public roads are considered.

It should also be noted that outside the UGB, the code does not require the applicant to assure that adequate levels of public services exist. The county is required only to consider the impact of the proposed development on public facility and service levels. While the land use review process does consider the impact of development on public services, it does not assure their adequacy.

In this case, schools are not impacted by the proposed facility. The applicant has provided service provider letters from the Washington County Sheriff's Office and the Tualatin Valley Fire and Rescue district confirming adequate levels of service for the subject site and proposed use.

Access is proposed on to SW Pacific Highway (an ODOT highway) to the west. The highway will be accessed via a public road easement to the north of the subject site. It is the applicant's responsibility to obtain any additional easement agreements for use of this shared road if necessary. As conditioned in Attachment B, prior to a temporary construction access, or permanent access to the site, the applicant is required to obtain a right-of-way permit (or an exemption therefrom) from ODOT, as applicable. Adequacy of the access approach to serve the proposed use and availability of adequate sight distance will be verified by ODOT.

The applicable provisions of Section 501-9 are met.

III. SUMMARY

The applicant has requested approval for Special Use, Development Review, and a Flood Plain Alteration for the construction of a utility facility necessary for public service (battery energy storage system) within the EFU District. Based on the information in the casefile and the findings of this report, staff concludes that the proposal complies with the applicable review standards of the code or can be conditioned to comply. Therefore, this request is **APPROVED** subject to the conditions of approval listed in Attachment B.



WASHINGTON COUNTY
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APPEAL INFORMATION

CASEFILE # L2400128-SU/FP

Attached is a copy of the Land Use and Transportation Department's Review Authority decision on this request for a Development Action.

Any person who is adversely affected or aggrieved, or who is entitled to written notice pursuant to ORS 215.416(11) may appeal the decision by filing a written appeal.

Failure to file a petition for review with the Department of Land Use and Transportation by 4:00 p.m. on the due date, with the fee specified in the Notice of Decision, shall be a jurisdictional defect.

The decision, including conditions of approval, may be appealed and a public hearing held by filing a signed petition for review (appeal) within twelve (12) calendar days of date written notice is provided (date mailed).

APPEAL PERIOD: 12/19/2024 (Date Mailed) to 4:00 p.m. on 12/31/2024 (Appeal Due Date)

This decision will be final if an appeal is not filed by the due date.

The complete file is available at the County Department of Land Use and Transportation for review.

A petition for review (appeal) must contain the following: L2400128-SU/FP

1. The name and signature of each petitioner filing the petition for review (appeal). If a group consisting of more than one person is filing a single petition for review, one individual shall be designated as the group's representative for all contact with the Department. All Department communications regarding the petition, including correspondence, shall be with this representative;
2. A statement of the interest of each petitioner;
3. The date the Notice of Decision was sent as specified in the notice (date mailed);
4. The nature of the decision and the specific ground for appeal. For applications with multiple requests, specify the particular request(s) and/or specific conditions of approval being appealed;
5. A statement listing the number of pages of the petition and that all pages are present;
6. A statement setting forth the appeal fee as specified in the Notice of Decision; and
7. The appropriate appeal fee of **\$250.⁰⁰**

For further appeal information, contact the Appeal Secretary at the Washington County Department of Land Use and Transportation. Phone 503-846-3849 or louisa_bruce@co.washington.or.us.