BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON

Regarding an application by Portland General Electric Company for approval of a conditional use permit to upgrade the existing powerline corridor along Stafford Road, adding taller poles and transmission lines, in unincorporated Clackamas County, Oregon	**F I N A L O R D E R** **File Nos. Z0282-25 and Z0313-25** **(PGE Stafford Road)**

A. SUMMARY

1. The applicant, Portland General Electric Company ("PGE"), requests approval to upgrade the existing power line to include added transmission lines along a roughly 5.9-mile section of SW Stafford Road between the existing electrical substation on Rosemont Road and SE 65th Avenue (the "project area"). As described by the applicant:

> *PGE is replacing approximately 134 utility poles in a 5.9 mile corridor along SW Stafford Road in Clackamas County, from a substation at SW Rosemont Road to the Wilsonville city limits at SW Kahle Road. Existing poles in this corridor that are being replaced were first installed in the 1940s, are substantially aged, and do not match the functionality of the new poles. The project replaces these with weathered steel monopoles and wood poles that allow 115-kV transmission lines and additional communications lines. Between Wilsonville city limits and SW Borland Road, where existing infrastructure is for distribution only, poles and lines will be upgraded to include new transmission. The northern segment of this corridor, from SW Borland Road to the Rosemont substation, already has both distribution and transmission, and infrastructure will be replaced with modern poles and wires to match the rest of the line.*
> …
> *The existing utility corridor along Stafford Road was established between 1947 and 1948. Existing poles in this corridor are being upgraded and strengthened to allow both distribution and transmission lines. Approximately two-thirds of existing poles will be converted from wood to steel, and one-third will remain wood. The basic components of a transmission line are the structures/poles, conductor cables, insulators, guying with anchors, foundations to support the structures, and communication cables.*

(Exhibit 2 at 5-6)[1]

2. The project area includes lands zoned RRFF-5 and EFU. Transmission lines are a conditional use in the RRFF-5 zone. The EFU zone allows utility lines, including

[1] The hearings officer refers to the .pdf page number of where a cited document or quotation appears in the electronic file for a particular exhibit.

transmission lines, located in the right of way to be replaced without land use review. However, transmission lines located on EFU land outside of the right-of-way require review subject to ZDO 401.05(G)(2). Therefore, the applicant requests:

a. Conditional use approval for replacement of the 95 utility poles on RRFF-5 zoned lands through File No. Z0282-25; and

b. Approval of a "*utility facility necessary for public service*" to replace seven existing poles at Rosemont Substation that are located on EFU zoned land outside of the right-of-way through File No.Z0313-25.

c. The remaining 32 poles located withing the right-of-way on EFU zoned lands are not subject to County land use review.

3. Hearings Officer Joe Turner (the "hearings officer") held an online public hearing about the application. County staff recommended that the hearings officer approve the application, subject to conditions. See the Staff Report and Recommendation to the Hearings Officer dated September 18, 2025, (the "Staff Report"). The applicant accepted the findings and conditions of approval as recommended by County staff, as amended by Exhibits 44 and 44a). 13 persons testified orally in opposition to the application. Other persons testified in writing, in opposition and in support of the project.

4. Based on the findings provided or incorporated herein, the hearings officer finds that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the "ZDO"), provided the applicant complies with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use does comply in fact with those standards. Therefore the hearings officer approves the applications subject to the conditions at the end of this final order based on the findings and conclusions incorporated herein.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about the applications on September 25, 2025. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Joy Fields summarized the Staff Report and her PowerPoint presentation (Exhibit 52). The applicant proposes to replace existing wood utility poles with mostly metal poles and add transmission lines within a 5.9 mile corridor along SW Stafford Road in Clackamas County; from a substation at SW Rosemont Road to the Wilsonville city limits at SW Kahle Road. There are existing electric power distribution

lines on most of the project area on SW Stafford Road and there are existing transmission lines on a portion of the project area. This project will add transmission lines to the entire project area.

a. The applicant is requesting approval of a Utility Facility Necessary for Public Service and associated transmission lines to replace seven existing poles at Rosemont Substation that are located on EFU zoned land outside of the right-of-way (File No. Z0313-25) and a conditional use permit for replacement of the 95 utility poles on RRFF-5 zoned lands (File No. Z0282-25). Replacement of 32 poles located withing the right-of-way on EFU zoned lands are not subject to County land use review.

b. She argued that approval of this application will not establish a precedent allowing transmission lines on scenic roads as there are existing 115kV transmission lines on a section of Redland Road that is also designated a scenic road.

c. The project will create an unmanned facility. Therefore, the application is exempt from ZDO 1007.07.

d. The project is also exempt from ZDO 1000, pursuant to Footnote 2 of ZDO Table 1001-1, which provides, in relevant part, "*[u]tility lines are not subject to Section 1000*."

e. The project corridor includes areas designated as Habitat Conservation Area ("HCA") and Floodplain, primarily where the project crosses the Tualatin River. The alteration or replacement of existing structures is exempt from HCA review when such alteration or replacement does not disturb more than 500 square feet of area within the HCA. The project is not anticipated to disturb more than 500 square feet of the HCA. However, the conditions of approval require additional information to ensure the project falls within that exemption or the applicant will be required to obtain approval of a habitat permit. As proposed, all of the replacement poles are located outside of the floodplain of the Tualatin River. Therefore, proposed conditions of approval related to floodplain impacts could be removed as proposed by the applicant in Exhibit 44.

f. There are no Special Use requirements in ZDO 800 that apply to utility poles.

g. ZDO 1203.03(D) requires the applicant demonstrate that "*The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.*" Residential and farm uses are both listed as primary uses in the RRFF-5 zone. However, the "*Farmlandia Farm Loop*" and commercial events related to Farmlandia are not listed as primary uses. Therefore, alleged impacts to those uses are not relevant to this criteria. These alleged impacts are relevant to ZDO 1203.03(E), which requires consistency with the applicable goals and policies of the Comprehensive Plan, primarily related to the scenic road

designation on the portion of SW Stafford Road between Rosemont and SW Mountain Roads.

h. She noted that the prior County decision denying the applicant's application to approve this project as an alteration of a nonconforming use (Z0236-24, Exhibit 57) is currently under appeal and therefore, not a final decision.

3. PGE senior project manager Jordan Messinger, consulting planner Ben Schonberger, and attorney Will Rasmussen appeared on behalf of the applicant, PGE. All three referred to the applicant's PowerPoint presentation (Exhibit 47).

a. Mr. Messinger summarized the proposed project.

i. He noted that the project will use both wooden and steel utility poles. All of the wood poles and most of the steel poles will be directly buried in the ground. "*A handful*" of the steel poles will be mounted on concrete foundations extending four to six inches above the ground surface and somewhat wider than the diameter of the pole.

ii. The project proposed with this application is part of a larger PGE project, the "*Tonquin Rosemont-Wilsonville Line Replacement Project*," located in Tualatin, Sherwood, Stafford, Wilsonville and unincorporated Clackamas County. The overall project that includes a new substation in Tualatin which was completed in May and upgrades to 11 miles of existing powerline corridor to convert them to 115 kV transmission lines. The portion of the project that is the subject of this application is part of the 7.4-mile Rosemont to Wilsonville segment. The route follows a utility line corridor that has been in use since the 1940s. Portions of the existing utility corridor already includes distribution and 115 kV transmission lines between the Rosemont substation and SW Boreland Road, and from SW Ellingson Road to the Wilsonville substation. The remainder of the corridor, between SW Boreland and SW Ellingson Roads, currently carries only distribution lines. This project will retain the existing distribution lines and add transmission lines on the remainder of the corridor.

iii. The project is needed to meet increased energy demand, strengthen the electrical grid, and support critical infrastructure and future economic development.

iv. The applicant chose this route for the project by identifying all potential corridors, rights-of-way, and other "*links*" that could be used to support a powerline. Then each corridor was reviewed in detail by an independent engineering consulting firm to determine which corridors best met the project metrics. The applicant originally reached out to ODOT regarding installing powerlines within the I-5 and I-205 rights-of-way, however ODOT prohibits powerlines within freeway rights-of-way. The applicant could locate the powerline adjacent to the right-of-way, but that would require acquiring easements from all property owners abutting the rights-of-way.

b. Mr. Schonberger summarized the project's compliance with the applicable approval criteria.

i. He noted that only those portions of the powerline that are located on lands zoned RRFF-5 are subject to conditional use review. Powerlines on EFU zoned land within a right-of-way are a permitted use, without County land use review. Powerlines located on EFU land but outside of the right-of-way - the seven poles connecting the powerline to the Rosemont Substation - are allowed as a "*utility facility necessary for public service*" proposed with Casefile Z0313-25. Only 75 of the power poles are located in the RRFF-5 zone and subject to CUP review proposed with Casefile Z0282-25.

ii. The project area is suitable for the proposed use, ZDO 1203.03(B). There are existing powerlines on the majority of the project area. The majority of the project area is located within the existing SW Stafford Road right-of-way and utilities, including powerlines, are commonly located within road rights of way. The fact that powerlines already exist within the project area is an "*existing improvement*" that makes the project area suitable, as powerlines are part of the existing "character" of the project area.

iii. The facility will be unmanned and has no transportation impacts. Therefore, it is exempt from the adequate transportation requirement of ZDO 1007.07(B), pursuant to ZDO 1007.07(B)(3), and ZDO 12.03.03(C) is met.

iv. The use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located. ZDO 12.03.03(D).

(A) The area is not vacant undeveloped land. The existing power poles and utility lines along SW Stafford Road and the relatively heavy traffic volumes on that road are part of the existing character of the area. Therefore, the project will only incrementally change the character of the area, replacing existing power poles with taller poles and adding more wires to an existing utility corridor.

(B) The surrounding area can be defined in a variety of ways. The applicant defined that "*surrounding area*" as land within 300 feet of the powerlines, twice the height of the tallest poles. The most expansive definition, proposed by Staff, includes all lands within ½ mile of the project area, based on the required notification area for the project. Based on that definition, the surrounding area includes 3,180-acres. Most of that area will not perceive any impact from the project.

(C) Primary uses in the surrounding area are generally limited to residential, farming, and forestry uses. This project will not impact those uses; replacing a utility pole with a taller utility pole will not substantially limit, impair, or preclude these uses. Potential impacts considered by the applicant include: fire risk, tree removal, natural resources, visual/aesthetics, property values, noise, and health. Based on the expert

testimony in the record, the project will have little or no change to these potential impacts and any effects that do occur will not substantially limit, impair, or preclude the use of surrounding properties for allowed primary uses. The project will replace the existing power poles with taller poles and remove some existing trees, which could affect the visual character of the area. However, a mere change in character alone is not a basis for denial; the change in character must "*[s]ubstantially limit, impair, or preclude the use of surrounding properties for allowed primary uses."* Opponents must identify a specific use and how that use is limited or impaired.

v. The use is consistent with the applicable goals and policies of the Comprehensive Plan. ZDO 1203.03(E). Only 2.7 miles of the 5.9-mile project area is designated as a scenic road and most of that section already has transmission lines within the right-of-way. This section of SW Stafford Road is also part of a planned County road improvement project that will involve additional grading, widening, and tree removal without County land use review. Eight of the other 24 scenic roads within the County have transmission lines within or adjacent to the right-of-way.

vi. For the power poles located on EFU land outside of the right-of-way, the connection to the Rosemont substation, the County approved "*essentially the same*" utility improvement in 2011 as a facility necessary for public service use.

vii. He argued that Mr. Wagner's photo simulation slides are not accurate. Mr. Wagner's slides are based on photo simulations included in the nonconforming use application. However, the applicant has since revised the project and photo simulations, reducing the number of trees removed. In addition, Mr. Wagner's manipulated and cropped the applicant's simulations to focus on the "*most apparent*" poles in those images. The slides to not provide an accurate view of the project, as the new lines and poles must be considered in context, without zooming in on individual poles, as shown in the applicant's photo simulations submitted with this application. Whether the project results in a major or minor change to the visual character of the area depends on proximity to the powerlines and the visual perspective. If the "*area*" is defined broadly to include all lands within ½ mile of the site, the visual impacts of the project must be viewed in that broader context.

viii. Nearly all of the EMF ("Electromagnetic Field ") and ELF (Extremely Low Frequency) studies showing potential EMF/ELF health effects are based on studies of very high voltage, 350 or 500 Kv powerlines and the impacts are very small.[2] This project is not proposing to install such high voltage lines. The 115 kV transmission lines proposed in this application currently exist throughout the County.

c. Mr. Rasmussen addressed compliance with ZDO 1203.03(D) and (E).

[2] In this Final Order the hearings officer uses the term EMF to include ELF. The hearings officer understands that there are differences between these sources, but they are similar and both terms are used in many of the studies in the record.

i. The Land Use Board of Appeals ("LUBA") held that ZDO 12.03.03(D) allows changes to the character of the area and even substantial impacts to surrounding properties. This Code section only allows denial when such impacts "*[s]ubstantially limit, impair, or preclude the use of surrounding properties for permitted uses,*" citing *York v. Clackamas Co*. __Or LUBA __, LUBA No. 2018-145, April 10, 2019 and County hearings officer Wilson's CUP decision in *Willamette United*, File Z0176-19-C. In this case, based on the expert reports included in the application, this project will, for the most part, have no impacts. Where impacts do occur, they are marginal impacts that will not substantially limit, impair, or preclude the use of surrounding properties for permitted uses

ii. ZDO 1203.03(E) requires that the project be "*consistent*" with the goals and policies of the comprehensive plan. Most of the goals and policies cited by opponents are aspirational. Some goals and policies conflict with others; therefore, the goals must be read together in context and balanced when conflicts occur. The hearings officer must apply the plain words of the plan and may not add or delete text from the plan. ORS 174.040. When the County intends to prohibit something it uses the words "*prohibit*" or "*shall not*" in its plan and goals. The County comprehensive plan does not prohibit transmission lines on scenic roads. Comprehensive plan policy 5.I.3 designates 24 scenic roads in the County. All of the scenic roads include powerlines and eight, including SW Stafford Road, include transmission lines. This is evidence that the Board of County Commissioners (the "Board") did not intend to prohibit transmission lines on scenic roads. In addition, ORS 758.010 provides that utilities have a "*right and privilege*" to construct, maintain, and operate electric transmission lines "along the public roads in this state …" ORS 758.010(1). The County only has the "*[a]uthority to designate the location upon roads … where lines…may be located…*" ORS 758.010(2). Therefore, the hearings officer should interpret the ZDO and the comprehensive plan consistent with this statute to allow this transmission line project.

iii. The County's decision regarding the prior nonconforming use application is not relevant, as that application was subject to different approval criteria. The nonconforming use criteria require "*no greater impact.*" This conditional use application requires that the use not "*[s]ubstantially limit, impair, or preclude the use of surrounding properties for allowed primary uses."* In addition, the applicant reduced the number of trees that will be removed with this application.

iv. Attachment Q.2 of Exhibit 2 demonstrates that EMF levels from this project will be minimal on the ground beneath the proposed power lines. There are existing transmission lines, including 500 kV BPA lines, in the neighborhood. The BPA powerlines also cross SW Mountain Road, which is a designated scenic road.

4. Attorney Greg Hathaway appeared on behalf of Save Stafford Road, a nonprofit organization of concerned property owners in the Stafford Road area, and summarized his written arguments (Exhibit 12). He argued that the proposed project will dramatically and

significantly change the existing aesthetics and character of the area, replacing the existing wooden power poles with steel poles that are nearly twice the height and diameter as existing poles, as shown in Mr. Wagner's photo simulations. As staff concluded in the prior nonconforming use application, the replacement poles and added powerlines are "*more industrial in appearance*," which will significantly alter the existing rural residential character of the area. Staff's findings in the nonconforming use decision are instructive, as that application involved the same: applicant, project and area, concerns, and adverse visual impacts. Where a standard is subjective it is appropriate to defer to the opinion of those who currently live in the area and will be most affected by the project.

a. He requested the hearings officer hold the record open to allow the public the opportunity to submit additional testimony and evidence.

5. Ed Wagner showed slides created from PGE's photo simulations comparing the existing and proposed powerlines (Exhibit 42).

a. He testified that each of the proposed new poles is at least twice as tall and wide as the existing pole it is replacing. Some of the poles are mounted on concrete blocks and supported by multiple guy wires (p 5 of Exhibit 42). In addition, the applicant will remove many existing mature trees that currently screen views of the road from adjacent homes and farms. The taller, larger poles will "*stick out like a sore thumb*," giving the area an industrial look (Exhibit 42 at 7). The County in its nonconforming use decision determined that this project will significantly change the existing scenic character of the area. The County's findings for this application ignore the intent and spirit of the scenic road designation.

b. Page 4 of Exhibit 42 shows that the powerlines will be very close to an existing school building. The powerlines are also very close to the existing Resurection Church, which increases the level of EMF exposure of the occupants of such buildings.

6. Jeanie Braun expressed concerns with EMF impacts from the project, as her home is located within 200 to 250 feet from the powerline. There is a swimming pool in her backyard where her children spend a lot of time in close proximity to the proposed powerlines, which will increase their EMF exposure. Studies have shown an increase in childhood leukemia from EMF exposure.

a. PGE paid $6,000 for an easement across her property but the project will reduce the value of her property by 25-percent.

b. Tree #47 on the applicant's tree removal list is a 53-inch oak, which qualifies as a heritage tree that required many decades to grow to that size. The proposed powerlines should be located outside the right-of-way along the I-5/I-205 corridors, as that would have less impact than the proposed project.

7. Jeff Yapp testified that his autistic son stops speaking when exposed to EMF. His family has made a number of changes to reduce his EMF exposure, but the proposed project will result in 24/7 exposure at their home. 81-percent of studies show some significant impact from EMF exposure while only 19-percent show no impact.

8. Kelly Bartholomew argued that the findings in the Staff Report are inconsistent with the statute and the Code. As noted in the nonconforming use decision, the project will significantly change the visual character of the area, which conflicts with SW Stafford Road's designation as a scenic road. The project will impact farm operations, a primary use in the RRFF-5 zone, by reducing property values, which will limit farmers' ability to obtain equity loans needed to purchase farm equipment and supplies. The visual impact of the powerlines will deter tourists from visiting local farms. The project is inconsistent with Statewide Planning Goals 5 and 15. ORS 197.175 requires protection of farmland and scenic areas.

9. Randall Yamada, chair of the Stafford CPO, testified on behalf of the CPO and himself. He noted that the CPO voted ten to zero to support opposition to this project. The applicant bears the burden of proof to show that all of the applicable approval criteria are met. Studies have demonstrated that the visual impacts of powerline projects are measurable and can be significant (Exhibit 46). He argued that SW Stafford Road functions as the "*main street*" of the community and the project will significantly alter the character of the community.

10. Ed Wagner Jr. argued that the proposed powerlines are not needed. The project will add a second layer of redundancy that is not necessary to accommodate the growing power needs of Clackamas County, based on PGE's own analysis.

11. Rick Cook noted that his property is included on the National Register of Historic Places and questioned whether that designation is relevant to the applicable approval criteria. He noted that Intel recently laid off 5,000 employees, which will reduce demand for electricity and the need for this project. There is no significant development planned for SW Stafford Road that will require additional energy resources.

12. Joe Ratti testified on behalf of himself and his wife Connie. He agreed with prior witnesses testimony regarding safety and other concerns.

a. He testified that the project is located in a "*let it burn zone*," where there is no fire protection. His property has 1/10th mile of frontage on SW Stafford Road with 100 to 150-foot tall trees. SW Stafford Road provides his only evacuation option in the event of a fire.

b. The project is designed to allow much higher voltage powerlines and future upgrades will increase residents' EMF exposure.

c. His property is part of a wetland corridor and one of the few remaining wetlands in the area.

d. Many people who do not live in the area drive on SW Stafford Road because it is a scenic road and that scenic character will be impacted by the project.

13. Gerri Dick testified that the project will locate three power poles along the front of her property, including one on a hill very close to her home. This will route powerlines "*over the top of her head*." The powerlines will be very close to the metal barns on her property, which could allow electricity from the powerlines to arc between the lines and her barns, creating a risk of fire or electrocution. If the project is allowed she would be forced to move due to concerns about the impact on her health from EMF exposure. She is also concerned about fire risk.

14. Alma Molina expressed concerns with safety, as the project will locate a power pole within 20 feet of her porch as well as increase the risk of fire in the area.

15. Professional engineer Joey Urnes questioned whether fire hydrants will be installed on SW Stafford Road. Fire hydrants should be required every 500 feet before the powerlines are installed.

16. Keith Okerstrom agreed that fire hydrants should be installed before the project is developed. He noted that SW Stafford Road is often congested with traffic on holidays and during severe weather events, further reducing emergency access and evacuation opportunities. Construction of the project will take one to two years, which will further impact traffic and congestion, limiting access to abutting homes.

17. At the end of the public hearing, the hearings officer held the record open subject to the following schedule:

a. For one week, until October 2, 2025, for anyone to submit any new testimony and evidence;

b. For a second week, until October 9, 2025, for anyone to respond to the testimony that was submitted during the first week of the open record period; and

c. For a final week, until October 16, 2025, for the applicant alone to submit a final written argument, without any new evidence.

18. Kelly Bartholomew submitted a "*Request for Official Notice of Applicable Law*" on October 28, 2025. That document was submitted after the close of the record and is excluded from the record in this case.

C. FINDINGS

The hearings officer adopts the following findings as his own.

1. **ZDO Section 401 Exclusive Farm Use (EFU)**

Section 401 regulates the Exclusive Farm Use District, which includes the subject property at the Rosemont Substation and 39 of the poles in the project corridor. Table 401-1 identifies "*Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right-of-way…*" as an allowed use with no requirement for land use review. Therefore, the transmission lines located in the right of way in the EFU District are not part of the analysis for these applications.

This land use review includes application Z0313-25, which is for a Utility Facility. Table 401-1 identifies "*Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300…*" as requiring a Type II land use review subject to 401.05(G)(2).

ORS 469.300(3) provides;

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

Finding: The proposed use is the replacement of existing utility poles with larger poles and the addition of transmission capacity to an existing power corridor in order to connect an additional transmission line to the existing Rosemont Substation. The substation itself is the Utility Facility and is not changing. The powerlines that are proposed for modification with this application are part of a "*utility facility necessary for public service*" as "*associated transmission lines*" included in ORS 469.300. This use is identified as a Type II use that is being processed concurrently with an application for a Conditional Use in the RRFF-5 District through file Z0282-25.

This criterion is met.

> *401.05(G)(2): A utility facility necessary for public service may be established as provided in OAR 660-033-0130(16)(a) and ORS 215.275 and 215.276, or, if the utility facility is an associated transmission line, as provided in OAR 660-033-0130(16)(b) and ORS 215.274 and 215.276.*

Finding: The applicant is proposing to upgrade the existing utility lines to add additional transmission capacity that will require taller poles to meet the separation requirements for utility lines. The seven poles proposed in the EFU zone outside of the right-of-way are located on the same property as the Rosemont Substation and are on the property owned by PGE at 50 Rosemont Road (the "substation property"). Those seven poles meet the definition of "*associated transmission line*."

As the applicant states in the application:

On March 28, 2025 the Public Utility Commission of Oregon (the "OPUC") granted PGE's request for a Certificate of Public Convenience and Necessity ("CPCN"). This is a critical step in the process, because it allows PGE to move forward with obtaining the necessary easement rights along the transmission line's path through contract and if necessary, condemnation proceedings. In the granting of the certificate, the OPUC conclusively determined that the project is necessary and in the public interest.

(Exhibit 2 at 9).

This criterion is met.

A. <u>OAR 660-033-0130(16)(b)</u>

(b) An associated transmission line is necessary for public service and shall be approved by the governing body of a county or its designee if an applicant for approval under ORS 215.213(1)(c) or 215.283(1)(c) demonstrates to the governing body of a county or its designee that the associated transmission line meets either the requirements of paragraph (A) of this subsection or the requirements of paragraph (B) of this subsection.

(A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

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

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

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

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

Finding: The entire route of the associated transmission line that is crossing high value exclusive farm use land are the seven poles located on the property with the substation. The applicant states:

For background, these seven poles were previously approved by the County in 2011 under these same statutory provisions. That application approved PGE's conversion of the site from a switching station to a substation (case file Z0404-11-AACA). The County reviewed the entire substation infrastructure, including these poles and lines, and approved

the utility facility through a Type II process. The site plan for the substation conversion included these transmission poles and wires. That 2011 County decision and those plans are included as an Exhibit T to this application.[3] *Because the rationale for replacing the poles is largely the same as the findings in the 2011 application, these findings borrow liberally from that case file and the County's approval.*

The subsequent analysis in the application submittal analyzes compliance with OAR 660-033-0130(16)(a). However, the criteria in OAR 660-033-0130(16)(a) and OAR 660-033-0130(16)(b) require similar evidence from the applicant.

In the application the applicant states "*The northern segment of this corridor, from SW Borland Road to the Rosemont substation, already has both distribution and transmission* [lines], *and infrastructure will be replaced with modern poles and wires to match the rest of the line*." (Exhibit 2 at 6). Photo simulation #21 at SW Stafford Road and SW Pattulo Way shows the existing transmission lines and the proposed poles with added transmission capacity (Exhibit 2 at 134). Therefore, the hearings officer finds that the proposed poles with added transmission capacity proposed on EFU zoned land outside of the road right of way are transmission lines that will be co-located with an existing transmission line. Also, by collocating the additional transmission lines on poles that already contain transmission lines the applicants also meets OAR 660-033-0130(16)(b)(iii), *"The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety;"*

The associated transmission line outside of the substation property is a linear facility that is primarily located within an existing road right-of-way. All of the poles in the EFU district are located in the road right-of-way. The 5.9 mile project includes four poles located on the edge or just outside of the road right-of-way. These four poles are in an area zoned rural residential RRFF-5 and therefore are outside of the review for Associated Transmission Lines pursuant to OAR 660-033-0130(16)(b).

This criteria is relevant to Z0313-25 and the seven poles proposed for replacement on land zoned EFU. Those seven poles are replacing poles that currently have transmission lines.

This criterion is met.

(B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:

(i) Technical and engineering feasibility;

(ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-

[3] The applicant refers to "*Exhibit T to this application.*" However, the documents attached to the application (Exhibit 2) do not appear to include Exhibit letter labels." "*Exhibit T to this application*" appears to refer to Casefile Z0404-11-AACA (Exhibit 2 at 469).

value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;

(iv) Public health and safety; or

(v) Other requirements of state or federal agencies.

Finding: The applicant states:

The upgraded power lines will provide an additional transmission connection between the two distribution substations (Rosemont and Wilsonville) that provide service to the surrounding homes and businesses. The new connection allows for power to be rerouted between the two substations if other transmission sources are damaged by a storm or accident, or when energy demand is high due to extreme hot- or cold-weather events, helping to reduce power outages in the immediate area and region.

(Exhibit 2 at 6).

[T]he facility is locationally dependent. The proposed seven poles and their associated lines must be where they are proposed to connect to the electrical infrastructure within the substation facility. A switching station or substation has been located at this site for more than 50 years. The transmission of power to this substation is a fundamental element of this project, and the proposed poles and wires carry this power. There is simply no other way to build the project if it doesn't connect—there is no substitute substation on non-resource land where this power line corridor could conclude. Given that reality, aboveground wires and poles to support this transmission capacity is the obvious solution.

Given the extremely limited constraints of the project—existing transmission leading to the edge of the property and connections from there to a 50-year-old substation/switching facility—PGE did consider alternatives. The result of this alternatives analysis found that the proposed alignment was the most feasible option, and that poles and wires must be sited on the substation site (see Exhibit T). Specifically with respect to this criteria, reasonable alternatives considered are:

- *Different alignments: Prior to proposing this alignment, PGE analyzed the feasibility of over 38 miles of alternate alignments. Ultimately, that feasibility study showed the route proposed was the shortest, crossed the fewest parcels, crossed the fewest streams and floodplains, and was least costly for customers. It also accounted for the Oregon Department of Transportation's state law prohibition*

against placing transmission lines in or adjacent to highway right of way absent demonstration of "extreme hardship." See ODOT March 22, 2024 letter (Exhibit R).

- *Undergrounding: Undergrounding the line was rejected because of significant increased costs that would be borne by all customers, permitting challenges and complexity of cable system design and construction, increased ground and vegetation disturbance, need for wider and more restrictive easements from a greater number of homeowners due to a greater disturbance area, materials procurement, and significant operational challenges for maintenance and repair. In relation to this standard, undergrounding the line actually creates greater disturbance of resource land than overhead wires because it requires larger easements.*
- *Relocating Substation: The proposed substation is part of a larger distribution system. Existing substations (Oswego, Meridian, Sullivan) are already in operation in the region and connect to the Rosemont Substation. The Rosemont facility is centrally located among these other substations, which allows it to provide adequate support, off-load demand, and provide redundancy to the system. There is no feasible method for moving this substation and its associated poles and lines to another non-EFU parcel without destroying its functionality. This applies to the seven poles specifically in this request. Moreover, because a substation must connect to a network of poles and lines, moving it and these seven poles would unquestionably impact EFU land elsewhere. These impacts would likely be substantially greater than simply permitting replacement of these existing poles.*

In other words, replacement of these seven poles must occur on the PGE site because the utility facility is locationally dependent. Reasonable alternatives to replacing the poles at this location were considered and rejected. There is simply no feasible option to put them on non-EFU land and have them connect to the long-established, previously approved substation."

(Exhibit 2 at 21-22).

The hearings officer agrees that, because the purpose of the project proposed in Z0313-25 is to connect two existing substations together through a transmission line and one of the stations is located on EFU land, there is no alternative location for the transmission lines to go that would not have to cross EFU land to reach the existing Rosemont Substation. Therefore, the seven poles that are the associated transmission line are "*locationally-dependent*." As noted above, the applicant reviewed the state regulations and chose the proposed location due to the Oregon Department of Transportation's ("ODOT") prohibition against placing transmission lines in or adjacent to highway right of way absent demonstration of "*extreme hardship*." (OAR 734-055-0080 and Exhibit 2 at 461).

Lastly, the seven poles are the only ones in the 5.9 mile project that are on EFU zoned land and are not able to be placed in a linear facility such as the road right-of-way; that is because the proposed poles connect the substation to the road following an existing transmission line. The existing transmission line between Stafford Road and the Rosemont Substation is located on PGE owned land.

This criterion is met.

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

Finding: The applicant states

> *The site where the seven poles and lines that are the subject of this part of the proposal is owned by PGE and has been in use as a switching station and then a substation for more than 50 years. The existing and replacement poles are within the boundaries of PGE property. No additional land will be needed to support the proposed development. The replacement of power poles on the site with somewhat taller poles has no impact in either accepted practices or the cost of those practices on surrounding lands devoted to farm or forest use. The modernization of the transmission poles and lines does not change the essential nature of the utility use on the site or by extension in the surrounding area. There is no greater impact on surrounding lands that currently exists from the transmission lines and poles already in place.*

(Exhibit 2 at 21).

> *"In the applicant's opinion, very few possible impacts from the new poles will be perceptible even at relatively short distances from the poles and lines. Therefore, the applicant chooses to define "surrounding area" as 300 feet from the edge of the replacement poles, along the right-of-way. This distance was selected because, horizontally, it is equal to about twice the height of the tallest proposed pole. Any impacts that might alter the character of the area will be nearly imperceptible at distances farther than this.*
>
> *For all the potential impacts that could occur from the new utility line use, their intensity diminishes over distance. Therefore, it is a reasonable presumption that impacts are significantly diminished, or even nonexistent, where the horizontal distance away from the power poles and power lines is at least twice as far as its height. Removal of a tree at the edge of the right-of-way, for example, has no quantifiable effect on land that is 300 feet away from the tree."*

(Exhibit 2 at 37).

> *The following seven specific possible impacts were analyzed for their impact on the character of the area:*
>
> - *fire risk*
> - *tree removal*
> - *natural resources*
> - *visuals/aesthetics*
> - *property values*
> - *noise*
> - *health impacts*
>
> *Each of the potential impacts are considered below. Within each possible impact, the applicant makes a judgement about whether the project actually does create this impact, whether it alters the character of the surrounding area, and if it does so in a way that substantially limits, impairs, or precludes allowed uses on surrounding properties.*

(Exhibit 2 at 44).

And

> *The replacement of existing utility poles that carry transmission lines with somewhat taller poles that carry transmission lines has no effect on farm practices, nor does it increase the cost of farm practices on those lands. No conditions to minimize impacts are therefore necessary or anticipated.*

(Exhibit 2 at 24 and 26).

Additionally, the applicant identified the surrounding lands, for the conditional use application Z0282-25 as:

> *In the applicant's opinion, very few possible impacts from the new poles will be perceptible even at relatively short distances from the poles and lines. Therefore, the applicant chooses to define "surrounding area" as 300 feet from the edge of the replacement poles, along the right-of-way. This distance was selected because, horizontally, it is equal to about twice the height of the tallest proposed pole. Any impacts that might alter the character of the area will be nearly imperceptible at distances farther than this.*
>
> *For all the potential impacts that could occur from the new utility line use, their intensity diminishes over distance. Therefore, it is a reasonable presumption that impacts are significantly diminished, or even*

nonexistent, where the horizontal distance away from the power poles and power lines is at least twice as far as its height. Removal of a tree at the edge of the right-of-way, for example, has no quantifiable effect on land that is 300 feet away from the tree.

(Exhibit 2 at 38).

The applicant identified some of the existing farm and forest practices as:

Common land uses within the surrounding area—in both configurations—are largely rural residential with some agriculture. Private land in the surrounding area has developed over time, with land uses characterized by low-density housing and associated structures largely surrounded by wooded areas, open spaces, farming fields, and private lawns. Inside the 300-foot "surrounding area" shown on the map above, there are some buildings with residential or commercial uses.

(Exhibit 2 at 40).

The potential impacts to the farm and forest practices in the surrounding area addressed by the applicant include tree removal and fire risk. Excerpts from those arguments are included below:

Removal of one or more trees at the edge of the road to make clearance for power lines would have little to no effect on the rest of the property. The ability to operate a farm, live in a nearby residence, or have a functional commercial use is not substantially limited, impaired, or precluded by removing one or more trees along the street edge of that same property.

(Exhibit 2 at 47).

The primary risk of fire from power lines comes from branches falling on or growing into overhead wires. The new elements of this power line corridor—the only part that is relevant to this analysis—is the addition of transmission wires at a height taller than existing distribution lines and the removal of vegetation. For this project, the distribution lines element will remain roughly the same, with the same number of poles to support them. Although the new wires strung between the taller poles that have transmission capacity carry more voltage, this does not translate into higher risk, for two reasons. First, wires that are 80 or 100 feet above ground are much less likely to encounter falling tree branches or other vegetation that would create fires. Second, the voltage of the line does not mean it is more likely to spark a fire. Shorts between energized lines and vegetation can potentially cause a fire regardless of the voltage.

The baseline and future risk of fire is also reduced because poles and power lines are also largely within the SW Stafford Road right-of-way. Because most of the road right-of-way is a paved surface with no vegetation, it does not provide any fuel for a potential future fire and creates a natural fire break that limits its spread.

(Exhibit 2 at 46).

> *The attached expert testimony finds a likely reduction in overall risk from wildfire by the proposed development (Exhibit H.1). PGE also has included as an exhibit its 2024 Wildfire Mitigation Plan, which outlines the careful steps it takes to reduce risk overall (Exhibit H.2).*

(Exhibit 2 at 44-45).

> *The project also contemplates enhanced vegetation removal, which reduces fire risk from baseline as part of the project. PGE vegetation crews routinely inspect vegetation around power lines to maintain necessary clearances and reduce the likelihood of trees or debris contacting these lines. As part of the project, PGE has prescribed detailed standards for the clearance of vegetation located under, near, and around overhead infrastructure near poles on a site-specific and construction-specific basis. Additionally, PGE ascribes to the principles of Integrated Vegetation Management (IVM) in the right-of-way. This promotes the retention of desirable vegetation species as a means of biological control, which helps with fuel loading. Other IVM methods may include a combination of chemical, cultural, mechanical, and/or manual treatments. The aerial easements that have been or will be obtained with this project mitigates potential risk of wildfires.*
>
> *Replacement of outdated poles and wires with modern versions is one element of "system hardening," which describes year-round investments that reduce the risk of ignition from PGE assets. This is a stated priority for the company's Wildfire Mitigation Plan (Exhibit H.2). Other risk-mitigation approaches include situational awareness, like enhanced monitoring or system performance and weather; operational practices, like line and vegetation maintenance; and, as a last resort, temporary shutdowns. Greater success at system hardening as the project proposes to upgrade and modernize equipment will reduce the need for other risk-mitigation measures.*

(Exhibit 2 at 46).

The power line corridor has been there in pieces since the 1940s, and the substation replaced the switching station over ten years ago, Therefore, the hearings officer finds that the subject property is not involved in farm practices and the 2011 substation decision resulted in a landscaped buffer around the substation. As noted above by the applicant, the tree removal or trimming along with hardening the system and following the wildfire mitigation plan will mitigate for the potential farm and forest impact from fire and tree loss. Therefore the hearings officer finds that any impact to farm and forest practices would be limited to those related to the replacement of the poles in the right of way along SW Stafford Road and that is an allowed use in the EFU zone.

This criterion is met.

(D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.;

Finding: As indicated above, the applicant considered the cost of undergrounding the transmission lines and relocating the substation, but the consideration of cost was not the only consideration in determining whether the associated transmission line is necessary for public service.

This criterion is met.

B. ORS 215.274 *Associated transmission lines necessary for public service; criteria; mitigating impact of facility.*

(1) As used in this section, "associated transmission line" has the meaning given that term in ORS 469.300.

(2) An associated transmission line is necessary for public service if an applicant for approval under ORS 215.213 (1)(c)(B) or 215.283 (1)(c)(B) demonstrates to the governing body of a county or its designee that the associated transmission line meets:

(a) At least one of the requirements listed in subsection (3) of this section; or

(b) The requirements described in subsection (4) of this section.

(3) The governing body of a county or its designee shall approve an application under this section if an applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

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

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

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

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

(4)(a) Except as provided in subsection (3) of this section, the governing body of a county or its designee shall approve an application under this section if, after an evaluation of reasonable alternatives, the applicant demonstrates that the entire route of the associated

transmission line meets, subject to paragraphs (b) and (c) of this subsection, two or more of the following factors:

(A) Technical and engineering feasibility;

(B) The associated transmission line is locationally dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;

(D) Public health and safety; or

(E) Other requirements of state or federal agencies.

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

(c) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (a) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service. [2013 c.242 §2]

Note: 215.274 was added to and made a part of ORS chapter 215 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Finding: As noted above, the entire route includes the seven poles that are the associated transmission line being considered through Z0313-25. That transmission line on those seven poles is being installed on a line that parallels an existing transmission line corridor with the minimum separation necessary for safety meeting 3(b) above.

Additionally, those seven poles are locationally-dependent because they are connecting a linear utility facility located in the existing road right-of-way with the existing Rosemont substation. The existing substation is on land zoned exclusive farm use and the properties on the east side of the road adjacent to the Substation are also zoned EFU. Therefore, the transmission line must cross EFU land to connect the existing substation to the linear transmission line in the right-of-way.

The applicant provided findings addressing how the applicant will mitigate and minimize the impacts to the farm and forest use that the community has brought up for this application.

The applicant showed that the service is needed on resource land to provide the existing service needs with fewer outages as well as to meet the service needs for a new water treatment plant that is necessary for public safety. The applicant considered reasonable alternatives and found that there was a lack of available nonresource lands within their search area and that the associated transmission lines are needed to connect the two power substations for public health and safety. Cost was not the primary consideration in the applicant's analysis determining that a utility facility is necessary for public service. The applicant is not proposing a natural gas pipeline or associated facility. The owner of the facility will be responsible for restoring the farmland if the utility facility use at the Rosemont Substation site is discontinued for a period of five years pursuant to ZDO 1203.06.

These standards can be met as conditioned.

C. <u>ORS 215.276</u> *Required consultation for transmission lines to be located on high-value farmland.*

(1) As used in this section:

(a) "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.

(b) "High-value farmland" has the meaning given that term in ORS 195.300.

(c) "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.

(2) If the criteria described in ORS 215.275 for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, or if the criteria described in ORS 215.274 for siting an associated transmission line are met, 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.

(3) The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. [2009 c.854 §1; 2013 c.242 §7]

Note: *215.276 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.*

Finding: The applicant is proposing transmission lines in conjunction with the utility facility necessary for public service. The applicant, PGE, is the record owner of the property with the associated transmission line on high value farmland being reviewed through file Z0313-25 and has the met the requirements of ORS 215.274 and ORS 215.275 as noted above. Because PGE is the applicant and the record owner of 50 Rosemont Road, it is reasonable to infer that PGE has consulted with itself on the project.

These criteria are met.

2. **ZDO Section 316 Rural Residential Farm Forest 5-Acre (RRFF-5)**

Section 316 regulates the RRFF-5 District, which includes the subject property for Z0282-25. This application is for a transmission line. ZDO Section 316, Table 316-1 controls land uses in the RRFF-5 zone and footnote 35 identifies transmission lines as a conditional use. The proposed use is a conditional use in the underlying RRFF-5 zoning district.

Table 316-1 also identifies the following uses as primary uses: Bus Shelters; Conservation Areas or Structures for the Conservation of Water, Soil, Forest, or Wildlife Habitat Resources; Dwellings; Farm Uses; Fish or Wildlife Management Programs; Forest Practices; Places of Worship; Recreational Uses; Roads, and certain Utility Facilities or Utility Lines.

3. **ZDO Section 1203.02 CONDITIONAL USES**

1203.01 PURPOSE AND APPLICABILITY *Section 1203 is adopted to provide standards, criteria, and procedures under which a conditional use may be approved.*

Finding: The applicant erroneously stated that section 1203 only applies to new conditional uses. The text of the Code quoted above does not include the word "*new*" and applies to conditional uses, including changes to conditional uses that cannot meet the requirements of Section 1309. The existing power line corridor along SW Stafford Road includes only distribution lines south of I-205. Therefore, upgrading the existing utility line in the RRFF-5 district to include transmission capacity is a conditional use pursuant to Table 316-1 footnote 35 and is subject to Section 1203. Section 1203 applies to land use application file Z0282-25.

Many opponents argued that the proposed use is not necessary or that alternative alignments and are available. However, the necessity of the use and the availability of alternative alignments are not a review criteria for the conditional use within ZDO 1203. The hearings officer must determine whether the proposed use in the proposed location complies with the applicable approval criteria for a conditional use. In addition, one of alternative routes cited by opponents would locate the powerlines along the I-5 and I-205 freeway. State law prohibits powerlines within freeway rights-of-way except in "*extreme*

hardship conditions." (OAR 734-055-0080 and Exhibit 2 at 461). Locating the powerline outside of the freeway rights-of-way would have the same, or greater, impacts on properties abutting those freeways; the impacts would be greater because all of the powerline would be located in easements on private property. With this project the majority of the powerline will be located in the existing SW Stafford Road right-of-way.

This criterion is met.

1203.02: Submittal Requirements

Finding: This application includes a site plan, application fee, a completed land use application form, and an application narrative addressing the criteria in ZDO Section 1203 (Exhibit 2). The application also includes a description of the proposed use and vicinity map. All of the submittal requirements under Subsection 1203.02 are included in the application. The application, Z0282-25, was submitted on July 9, 2025.[4] The application was deemed complete on July 30, 2025.

This criterion is met.

1203.03: General Approval Criteria

(A) *The use is listed as a conditional use in the zoning district in which the subject property is located.*

Finding: The subject site for the Transmission Line Corridor is located along SW Stafford Road. The utility line corridor passes through the Rural Residential Farm and Forest -5 acre (RRFF-5) and the Exclusive Farm Use (EFU) zoning districts. ZDO Section 316, Table 316-1, controls land uses in the RRFF-5 zone and footnote 35 identifies that transmission lines are a conditional use. The proposed use is a conditional use in the underlying RRFF-5 zoning district.

Except for the seven poles being reviewed through Z0313-25, the proposed poles for the transmission line located in the EFU zoning district are all within the existing road right of way and thus can be installed without land use review, pursuant to ZDO 401.

The applicant argues that the County's requirement for a conditional use permit is preempted by state law, citing ORS 758.010(1) (Exhibit 2 at 13). However, the hearings officer has no authority to address that issue. The hearings officer's authority is limited to review of this application, to determine whether it complies with the County Code. If a conditional use permit is not required and this use is allowed by right, then the hearings officer has no jurisdiction over the proposed use. The applicant has submitted an application for approval of a conditional use and the hearings officer will review that application for compliance with applicable regulations. The applicant has preserved its

[4] The Staff Report states that additional application materials were submitted on July 30, 2025 (Exhibit 1 at 25). However, the materials submitted on July 30, 2025, were limited to an application form for a "Utility Facility in EFU District" (Exhibit 2a), which is related to Casefile Z0313-25. No new materials were submitted for the conditional use application, Casefile Z0282-25.

preemption argument on the record and presumably may raise that in the event of an appeal to a higher review authority.

This criterion is met.

> ***(B)*** *The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

Finding: This criterion is limited to analysis of whether the "*subject property*," the portion of the proposed powerline corridor located in the EFU zone, is suitable for the proposed use. Potential impacts of the proposed use on adjacent properties and uses are not relevant to this criterion. Such offsite impacts are addressed through ZDO 1203.03(D).

The subject property consists of many tax lots that contain road right-of-way (See Figure 7 of Exhibit 2). The structural development of power poles is proposed within existing and expanded road right-of-way. Existing improvements on the subject property include existing overhead powerlines. The existing utility line has been in existence since the late 1940s in two separate pieces as verified through a nonconforming use verification file Z0236-24 (Exhibit 57). The portion of the utility line corridor along SW Stafford Road north of SW Boreland Road currently includes 115 kV electrical transmission lines, distribution lines, and other communication lines. The portion south of I-205 is limited to electrical distribution lines and other communication lines. The proposal is to connect these two utility lines together and add electrical transmission lines to the entire route. SW Stafford Road is a public road with the functional classification of a Minor Arterial and the applicant has condemnation authority to expand the road right-of-way to meet the needs created by this proposed project (0.7 miles of new right-of-way is needed according to page 381 of Exhibit 2). This existing powerline corridor makes the site more suitable for the proposed transmission line use.

The topography along SW Stafford Road includes rolling hills. The existence of the power distribution line in the SW Stafford Road right of way indicates that the topography of the subject property is suitable for power lines. The applicant identifies that the subject property includes the road shoulder areas that have been graded and altered to meet engineering requirements for the road and that the difficult portion of the property is around I-205. However, with taller poles, the distance and topography between the poles can be safely traversed. Opponents noted that "*Stafford Road traverses a designated 25% slope conservation area*." (Exhibit 64 at 11-12). However, there is no evidence that such slopes exist within the "subject property;" the existing and proposed right-of-way abutting SW Stafford Road. As noted above, the areas within the right-of-way have been graded to accommodate the road and existing utilities. To the extent that the subject property includes such slopes, the slopes do not make the subject property unsuitable as the applicant can locate and install poles to limit or avoid impacts to such slopes and install required erosion control measures to limit erosion and sediment impacts.

The applicant states

> ***Size and Shape****: The "subject property" is mostly road right of way along Stafford Road. Seventy-one of the 75 poles subject to this conditional use review are fully within the right of way. As a result, the defining characteristic of the property's shape is its linearity. Only four poles straddle the right-of-way line or are just outside the right-of-way on private property. Both the proposed use, a utility line, and the right-of-way corridor are inherently linear. The shape of the property is therefore perfectly suited for this use. At a high level, the size and shape of the right-of-way are demonstrably suitable for the proposed use because it already supports that use in the form of an existing power line corridor. This existing power line corridor includes sections of distribution and transmission lines.*"

(Exhibit 2 at 33).

The corridor contains improvements including, homes, schools, places of worship, and agricultural businesses. The applicant provided an analysis of the number of buildings/structures within 100 feet of the proposed transmission line and found 119 structures (page 384 of Exhibit 2). However, those structures are not located within the right of way and are outside of the "*subject property*" where power poles are proposed. Existing improvements within the "*subject property*" are limited to the existing power poles, which will be replaced with this application, other public utilities, and SW Stafford Road itself. These improvements do not make the subject property unsuitable for the proposed use.

The applicant states:

> *Notable natural features along the edges of this corridor include areas of open farmland, wooded areas, and the Tualatin River. These features are not contained in the "subject property" itself, with a few exceptions, but are on adjacent lands. Most of the relevant "subject property" is Stafford Road right-of-way, where the facility itself is proposed. That right-of-way is cleared of trees and other vegetation, paved for the road surface or gravel shoulders, and subject to a constant flow of high-speed vehicular traffic. Natural features are more apparent with the parts of the subject property that are made up of abutting tax lots. This has a mix of developed residential, farming, and commercial uses and also wooded areas and other natural resources. Importantly, though, no poles and lines are sited deep into these areas of the subject property. All of the poles and lines are either fully within Stafford Road right-of-way or just over the boundary on the edge of private property. Strictly speaking, the right-of-way has no natural features within its boundaries, and the few affected tax lots do not have natural features on the sliver of their land where poles and lines are located.*

(Exhibit 2 at 36).

Other natural features in the power line corridor include trees that currently provide wildlife habitat and buffering for neighbors from the busy road that is classified by the

Clackamas County Comprehensive Plan as a Major Arterial. In addition, the portion of SW Stafford Road between Rosemont and SW Mountain Roads is designated a Scenic Road and the existing trees contribute to the scenic character. However, the 2024 Wildfire Mitigation Plan prepared by PGE and filed with the Oregon Public Utility Commission in 2023 (Exhibit 2 at 141) indicates that line clearance that is essential for the reduction of wildfire.

> *PGE inspectors create project-specific work layouts for vegetation contractors to complete while moving through the system and performing RVM activities. Line clearance pruning specifications are designed to maintain vegetation clearances during routine wind and adverse weather conditions. At a minimum, PGE adheres to the voltage-based clearance requirements specified in OAR 860-024-0016. During the three- year standardized maintenance cycle, PGE vegetation contractors trim identified trees to PGE specifications to comply with OAR Division 24 Safety Standard, and American National Standards Institute A300 and OSHA Z133 guidelines.*
>
> …
>
> *Regardless of a tree's condition, removal practices associated with AWRR apply to any tree within striking distance of PGE electrical infrastructure.*

(Exhibit 2 at 213)

While neighbors are concerned with the removal of trees, they are also concerned with potential for wildfires. The proposal to add transmission capacity to an existing power distribution line will result in the removal of up to 204 trees in the RRFF-5 zone to adhere to the voltage-based clearance requirements to reduce wildfire risks. The hearings officer find that the removal of 204 trees within an existing utility corridor for a project that extends more than five miles along a road classified as a Major Arterial, does not make the proposed location unsuitable. As discussed below, the northern portion of SW Stafford Road is also classified as a scenic road. Clearing of trees for this project will alter the visual character of the roadway. However, as discussed below, those changes are not *per se* inconsistent with the scenic road classification. Removal of trees within the right-of-way will alter the existing aesthetic of the roadway but it will also expand views from the roadway, allow travelers broader views of abutting lands. The hearings officer finds that, on balance, the need to remove trees does not make the proposed location unsuitable for the use. Therefore, the subject properties under the proposed power line corridor, are suitable for the proposed use.

Opponents to the application state in Exhibit 4 and in similar language in Exhibit 12:

> *Stafford Road is not "suitable" for this project for multiple reasons.*
>
> *a. Viable alternatives: There are many viable, less impactful, alternative routes that were prematurely eliminated by PGE early in this process. For example, routing the transmission line along the I-205 and I-5 freeways would not require placing an industrial-style transmission*

line through residential front yards, removing over 250 trees along a County designated rural scenic road, placing dangerous high voltage power lines over or adjacent to homes and sleeping children, along a single lane road with narrow shoulders, frequent traffic congestion and many accidents. In PUC hearing documents, PGE prematurely eliminated many other viable alternative routes that would be safer, less destructive and would not violate the County ZDO and rural scenic road policy.

(Exhibit 4 at 4, footnotes omitted from original).

As discussed above, the availability of alternative alignments is not an applicable conditional use review criteria within ZDO 1203. The hearings officer must determine whether the proposed use in the proposed location complies with the applicable approval criteria for a conditional use, including whether the "*subject property*" proposed by the applicant is suitable for the use. The applicant is only required to demonstrate that the subject property is suitable, not that it is the most suitable for the proposed use.

b. Unique fire risk: Due to the "location," "topography" and "natural features" of Stafford Road, the area is uniquely poised for a catastrophic, uncontrollable fire on a dry, windy, summer day. Constructing high voltage power lines directly over or adjacent to homes, without fire hydrants or public water and no adequate egress for miles along a one lane road, surrounded by dry hay fields and trees, is a recipe that will place residents in unacceptable fire danger. PGE consulted with local fire departments who confirmed that the Stafford area has rapid fire response times and "adequate resources." Unfortunately resources and response time did not control three of the deadliest fires in this country: Lahaina, Paradise and Eaton. The conditions that created the "perfect storm" in these deadly wildfires are precisely replicated in the "location," "topography", "natural features" of the Stafford area in the summer: frequent strong winds, dry grasses and trapped residents with "no way out." Stafford Road also has the additional risk factors of no public water and no fire hydrants. PGE is proposing to add high voltage transmission lines to a residential location where "perfect storm" catastrophic fire conditions exist all summer. PGE's "fire mitigation plan" consists of ensuring residents that Stafford Road is not in a "high risk zone (HFRZ)" and that local fire department response time is "adequate." This cannot be acceptable."

(*Id.*, footnotes omitted from original).

The proposed transmission lines will be located in the same location as existing powerlines; transmission and distribution lines in the northern portion and only distribution lines in the southern portion. The only location where there are no existing powerlines is between SW Ek Road and I-205. There is no evidence in the record that the proposed transmission lines have a higher incidence of fire ignition compared to

distribution lines. In addition, the transmission lines will be at higher elevations, reducing the potential for contact with trees or other flammable vegetation. This area is not served by public water and there are no existing fire hydrants. However, such conditions are not unique to the subject property. Powerlines, including transmission lines, exist throughout the region, including many rural areas without public water or hydrants and there is no evidence in the record that such powerlines create an unusual risk of fire. Therefore, the hearings officer cannot find that the site is unsuitable based on increased risk of fire.

This criterion can be met as conditioned.

> ***(C)*** *The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.*
>
> *1007.07 TRANSPORTATION FACILITIES CONCURRENCY*
>
> *A. Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.*
>
> *B. Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:*
>
> …
>
> *3. Unmanned utility facilities, such as wireless telecommunication facilities, where no employees are present except to perform periodic servicing and maintenance;*
>
> …

Finding: The proposed use is an "*unmanned utility facility*." ZDO 202 defines a utility facility as:

> *UTILITY FACILITY: A building, structure, or any constructed portion of a system that provides for the production, transmission, conveyance, delivery, or furnishing of heat, light, power, gas, water, sanitary sewer, stormwater, telephone, cable television, internet, or other similar service. Utility facility does not include wireless telecommunication facility.*

The proposed transmission line is a "*utility facility*" as it will provide for the transmission of power. The utility facility, consisting of powerlines supported by utility poles, will be unmanned. Therefore, pursuant to ZDO 1007.07(B)(3), the proposal is exempt from ensuring the capacity of transportation facilities is adequate or will be made adequate in a timely manner.

Save Stafford Road states in Exhibit 12:

> *Subsection 1007.07 requires that:*
>
> > *"Development adjacent to scenic roads identified on Comprehensive Plan Map 5-1, Scenic Roads, shall conform*

to the following design standards, as deemed appropriate by the Department of Transportation and Development:

*i.[sic] Road shoulders **shall be** [emphasis added] improved to accommodate pedestrian and bicycle traffic; and*

*b. Turnouts **shall be** (emphasis added) provided at viewpoints or for recreational needs."*

As stated above, the Clackamas County Comprehensive Plan designates Stafford Road as a Rural Scenic Road (Section 5.I). Stafford Road is a narrow, one-lane road with minimal shoulders. Pursuing the Proposed Project along Stafford Road is not only dangerous but the project cannot meet the requirements of Subsection 1007.07 above.

As staff note, the quoted section is actually ZDO 1007.02(3), not 1007.07. ZDO 1007.02, which regulates the development of public and private roadways, is inapplicable to this application for approval of transmission lines.

In addition, the County has no authority to require turnouts or pedestrian and bicycle improvements as a condition of this development because there is no essential nexus between the impacts of the proposed development and the need for such improvements. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141 (1987) and *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013). However, the applicant accepted proposed condition of approval 5 in the Staff Report requiring that easements for new rights-of-way include language allowing for such facilities (Exhibits 44 and 44a).

The hearings officer finds that "*safety of the transportation system is adequate to serve the proposed use.*" (ZDO 1203.03(C). As noted above, the facility is unmanned. Therefore, the transportation system is only needed for periodic inspection, maintenance, and repair of the powerline corridor and the existing system is adequate to accommodate that need. Opponents argued that tree removal for this project will increase speeding on SW Stafford Road (Exhibit 8). However, there is no evidence in the record to support that assertion. Ongoing road improvements to SW Stafford Road may encourage higher speeds by widening the paved surface of the roadway, but those road improvements are not related to this application.

Opponents argued that the proposed steel poles within the right-of-way pose a hazard to motorists (Exhibit 32 at 3). There is no dispute that vehicles may leave the roadway and crash into power poles. However, similar risks exist under existing conditions and on roads throughout the region wherever utility poles are located near roadways. Trees and structures located near the roadway pose similar hazards. The applicant must comply with any applicable regulations requiring separation between the roadway and utility poles, but the applicant is not required to demonstrate such compliance in this proceeding.

This criterion is met.

(D) *The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of*

surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.

Finding:

Definitions: The Code does not define the majority of the terms used in this section. Therefore, the hearings officer must rely on the dictionary definition of the terms. *PGE v. BOLI*, 317 Ore. 606, 611, 859 p2d 1143 (1993); *State v. Murray*, 340 Ore 559, 604, 136 P3d 10 (2006). Merriam-Webster.com Dictionary provides the following relevant definitions:

Alter: 1 : to make different without changing into something else

an event that altered the course of history

…

"Alter." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/alter. Accessed 28 Oct. 2025.

Character:

1 a : one of the attributes or features that make up and distinguish an individual

This is a side of her character that few people have seen.

b : (1) : a feature used to separate distinguishable things into categories

also : a group or kind so separated

advertising of a very primitive character

(2) : the aggregate of distinctive qualities characteristic of a breed, strain, or type

a wine of great character

…

"Character." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/character. Accessed 28 Oct. 2025.

Surround

1 a (1) : to enclose on all sides : ENVELOP

the crowd surrounded her

(2) : to enclose so as to cut off communication or retreat : INVEST ENTRY 2

b : to form or be a member of the entourage of

flatterers who surround the king

c : to constitute part of the environment of

surrounded by poverty

d : to extend around the margin or edge of : ENCIRCLE

a wall surrounds the old city

"Surround." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/surround. Accessed 28 Oct. 2025.

Area

…

4 : a particular extent of space or surface or one serving a special function: such as

a : a part of the surface of the body

b : a geographic region

"Area." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/area. Accessed 28 Oct. 2025.

Substantial

…

3 b : considerable in quantity : significantly great

"Substantial." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/substantial. Accessed 28 Oct. 2025.

Limit

1 a : something that bounds, restrains, or confines

the age *limit* for junior golf

…

"Limit." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/limit. Accessed 28 Oct. 2025.

Impair

: to diminish in function, ability, or quality **:** to weaken or make worse

"Impair." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/impair. Accessed 28 Oct. 2025.

Preclude

1 : to make impossible by necessary consequence : rule out in advance

…

"Preclude." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/preclude. Accessed 28 Oct. 2025.

The applicant and Save Stafford Road offered the following additional definitions.

The Applicant states:

To limit is "to restrict the bounds or limits of" or "to curtail or reduce in quantity or extent," per dictionary definitions. This is the lower end of the impact scale when compared to the other two verbs in the phrase. The establishment of permitted, conditional, and prohibited land uses is already a limit, so this assumes further limitation. For a use to be limited by proposed development, it would have to prevent a property owner from using their land to a degree that would otherwise be allowed within existing land use regulations.

To impair is "to diminish in function, ability, or quality; to weaken or make worse." Similar to "limit," for a land use to be impaired by proposed development, it would have to hinder the allowed use from occurring in an observable, quantifiable way that is contrary to the manner intended by the County zoning code.

To preclude is "to make impossible by necessary consequence, rule out in advance." This is the strongest of the three verbs in the list, as it denotes wholesale negation of the use. For a land use to be precluded by the new development, it would be blocked, stopped, or entirely obstructed from occurring.

Of the three verbs, "limit" is the lower end of the impact scale while "precludes" is the more extreme end.

…

(Exhibit 2 at 44).

Save Stafford Road states:

*"LUBA citing Webster's Third New International Dictionary (unabridged ed. 2002) defined "limit" as: "1. To: confine to within certain limits: fix, constitute or appoint definitely, allot, prescribe * * * 3a: to set the bounds or limits; b: to curtail or reduce in quantity or extent." LUBA defined "impair" as: "to make worse, diminish in quantity, value, excellence or strength, do harm to: damage, lessen ."*

The term "substantially impairing" means that the Proposed Project must not interfere with, diminish the value of, or negatively affect the ability to enjoy existing and legally established uses in the EFU and RRFF-5 zones. The purpose of such a rule is to protect the character and integrity of a neighborhood. This is referred to as the "non-impairment standard."

Save Stafford Road understands that it must establish that PGE's Proposed Project demonstrably interferes and impairs the primary uses allowed in the Stafford Road Area rather than a general dislike of the Proposed Project."

(Exhibit 12 at 19).

The following uses are allowed as "*primary uses*" in the RRFF- 5: Bus shelters, Conservation Areas or Structures for the Conservation of Water, Soil, Forest, or

Wildlife Habitat Resources, Dwellings, Farm Uses, Fish or Wildlife Management Programs, Forest Practices,, Places of Worship,, Recreational Uses, Government-Owned,, Recreational Uses, Government-Owned Golf Courses, Roads, Short-Term Rentals, and certain Utility Facilities (ZDO Table 316-1).

Surrounding area: The applicant identified the surrounding area as the properties in two ways: the area within 300 feet of the subject property. Staff argued that the surrounding area should be defined as the area within ½ mile of the proposed use. The hearings officer reviewed the impacts of the use from both perspectives: within 300 feet and within ½ mile of the proposed use, as the scale of impacts may change with distance from the proposed use as the broader interpretation urged by staff may unduly dilute some impacts such as aesthetics, noise, and EMF, while other impacts, such as wildfire risk, will extend much further. Considerations for potential ways the proposed use could impact the surrounding area are discussed below including: fire risk; property values, noise, tree removal; health impacts, visuals and aesthetics, and natural resources.

Character:

The hearings officer finds, based on the testimony and evidence in the record, that the existing character of the surrounding area includes the following elements, moving from the subject property outward:

- Existing overhead powerlines (transmission and distribution lines on the north end of the project and distribution lines on the southern portion) supported by utility poles ranging in height from 34 to 70 feet, with an average height of 41.7 feet;
- SW Stafford Road, a two-lane Major Arterial Road connecting the cities of West Linn and Wilsonville that is also designated a Scenic Road by the Clackamas County Comprehensive Plan;
- Vegetation abutting the roadway includes open fields, residential landscaping, unmaintained trees and shrubs, to forest;
- Uses in the area include rural residential and farm properties of varying sizes, developed with homes, barns, and other accessory structures, open fields, school and religious facilities, and limited commercial uses. The Farmlandia Farm Loop is also part of the surrounding area;
- The Tualatin River, the I-205 freeway, and a BPA powerline easement all cross the project area;

(Exhibit 2 at 113-136 and 291-350; Exhibit 12 at 57-70 and 71-75; Exhibit 42; Exhibit 45; Exhibit 66 at 9-22;. Tower height numbers are from Exhibit 73, Attachment D).

Potential impacts to the character of the area:

The parties identified the following as potential impacts to the character of the area:

- Increased fire risk and arcing;

- Adverse health from EMF exposure
- Property values
- Farming impacts
- Increased noise
- Tree removal
- Wildlife and natural resources
- Views and Aesthetics:

ZDO 1203.03(D) does not prohibit any changes to the character of an area or impacts to primary uses. The Code only prohibits changes in character that "*[s]ubstantially limit, impair, or preclude the use of surrounding properties for primary uses* (ZDO 1203.03(D).

The hearings officer adopts the following findings regarding the listed impacts:

Fire:

Opponents raised a number of concerns regarding increased fire risks from the project including limited egress opportunities, lack of fire hydrants and public water, dry farmland, and frequent high winds. The applicant's Wildfire Mitigation Plan (Exhibit 2 at 138) considered and addressed these concerns for PGE's entire service area. Areas where these risks are most severe are identified as high fire risk zones (HFRZ), "*[a]reas within PGE's service area where vegetation, terrain, meteorological patterns, access and response timing, and wildland-urban interface considerations increase the risks associated with wildfire.*" (Exhibit 2 at 146). Although these risks exist in the project area, they are not significant enough to classify this area as an HFRZ.

There are existing powerlines in the majority of the project area. Although opponents asserted that the proposed transmission lines pose a greater fire risk than the existing distribution lines, there is no evidence in the record to support this assertion. With this project the applicant will undertake a variety of measures to reduce the existing fire risk including: clearing of vegetation that could come into contact with the wires and spark fires; installing modern electrical and monitoring equipment; implementing operational standards established by the applicant's Wildfire Mitigation Plan, including fire season settings and practices; and application of multiple safety and design standards in the construction, design, and operation of the proposed transmission line (Exhibit 2 at 140).

Opponents asserted that wooden utility poles may less susceptible to failure during a wildfire compared to than certain types of metal poles (https://woodpoles.org/wp-content/uploads/TB_PolesInWildfires.pdf, cited at p 4 of Exhibit 32). However, other studies noted that the available data does not support a difference in fire resistance between wood and galvanized steel poles (https://woodpoles.org/wp-

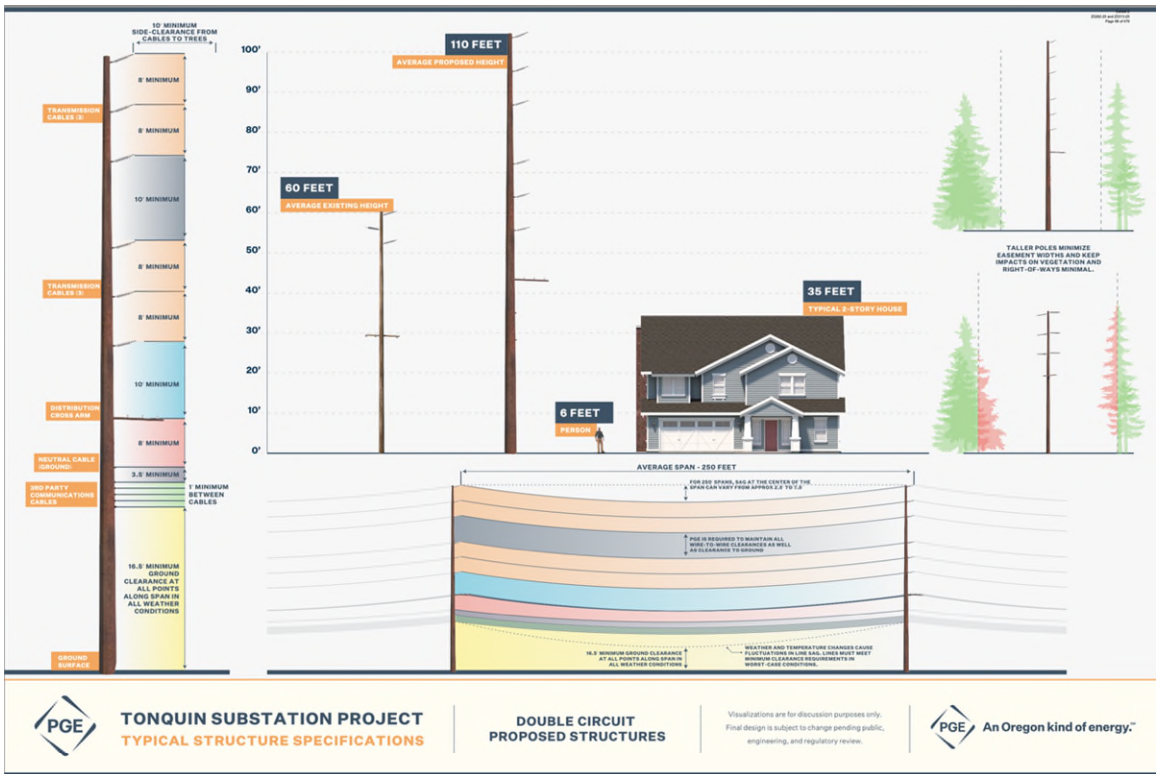
content/uploads/TB_PolesInWildfires.pdf, cited at p 4 of Exhibit 32).[5] In addition, there is no evidence that it is feasible to utilize wooden poles to provide the height needed to support the proposed transmission lines. Given this conflicting evidence the examiner cannot find that it is necessary to require wood poles to alleviate the risk or impacts of fire.

As noted in the Staff Report, the PGE Wildfire Mitigation Plan identifies methods of hardening the system against wildfires and one of the potentials it identifies is to use ductile iron poles. The applicant argued that the Wildfire Mitigation Plan "*[o]ffers several choices of materials, some of which perform better than ductile iron in certain situations*" (Exhibit 44a at 3). However, that assertion is not supported by the text of the Wildfire Mitigation Plan which requires the replacement of wood poles in the HFRZ that are damaged or replaced with ductile iron poles (Exhibit 2 at 164) and notes that the use of ductile iron poles reduces the risk of potential wildfire ignition (*Id*. at 218). Therefore, the applicant should be required to utilize ductile iron poles instead of weathered steel for the poles that are replacing wood poles with metal poles. See condition 6 of this Final Order.

The hearings officer finds that the applicant's Wildfire Mitigation Plan, which must be reviewed and approved by the Public Utility Commission, is the best evidence in the record as it considers and balances the risks and benefits of the various equipment and materials. To reduce structural failure of the poles during a wildfire, a condition of approval to require ductile iron poles for the metal poles could mitigate for the potential fire impacts related to pole strength. This is required by condition of approval 7 in the Staff Report.

There is no evidence that the higher voltage transmission lines proposed with this application are likely to pose a higher risk of "*Arcing also known as a flashover or arc flash; an electrical discharge that occurs when electricity jumps across a gap in the air between two conductors or between a conductor and a grounded object.*" (Exhibit 4 at 6). Electrical arcing clearly "*[p]oses severe risks, including electrical burns, potential for electrocution, and even death as well as damage to equipment and structures*" (*Id.*), if it occurs. However, there is no evidence in the record that arcing from between electrical transmission lines and ground based structures is a significant problem, despite the presence of transmission lines throughout the region, including in proximity to metal buildings, gates, and fences. As shown in the illustrations below, the transmission lines will be located on taller poles, allowing for greater separation between the powerlines ground mounted structures and vegetation. The higher voltage transmission lines will be located near the top of the poles, providing even greater separation from ground structures and equipment.

[5] The Oregon Structural Specialty Code and the "Steel Construction Fire Protection" article (https://www.steelconstruction.info/images/8/87/Steel_construction_-_Fire_Protection.pdf, cited at p 4 of Exhibit 32) are not relevant to this issue, as they both relate to the fire resistance of steel construction materials in buildings.



(Exhibit 2 at 97-98).

While opponents request to have the line go underground to reduce fire impact, the applicant states that undergrounding the proposed lines will require wider easements and greater vegetation removal as well as significantly increasing the cost of the project by a factor of ten (Exhibit 2 at 443). Therefore, in addition to the cost increase to the project, undergrounding the lines would result in greater impacts to adjacent neighbors. Also, as discussed above, the applicant is not required to address alternatives to the proposed overhead powerline project. The issue before the hearings officer is whether the project, as proposed, can comply with the approval criteria, not whether alternatives are available that would potentially have less impact.

The hearings officer finds that the applicant's Wildfire Mitigation Plan and the expert testimony of the applicant's consultant (Exhibit 2 at 137) is the best evidence available regarding the fire risk of the project. That plan is based on review of the specific fire risks related to the equipment used by the applicant and the fire risks that occur within the applicant's service area. In addition, the Wildfire Mitigation Plan is subject to annual review and approval by the Public Utility Commission pursuant to OAR 860.300.

Health Effects:

Opponents expressed concerns with health effects from radiation generated by the powerlines. The American Cancer Society provides the following relevant summary:

> *Radiation exists across a spectrum , from very high-energy (also referred to as high-frequency) radiation to very low-energy (or low-frequency) radiation. This is sometimes referred to as the electromagnetic spectrum.*

> *Examples of high-energy radiation include x-rays and gamma rays. They, as well as some higher energy ultraviolet (UV) rays, are classified as ionizing radiation, which means that they have enough energy to remove an electron from (ionize) an atom. This can damage the DNA inside cells, which can sometimes lead to cancer.*
>
> *Extremely low frequency (ELF) radiation is at the low-energy end of the electromagnetic spectrum and is a type of non-ionizing radiation. Non-ionizing radiation does not have enough energy to directly damage DNA. ELF radiation has even lower energy than other types of non-ionizing radiation like radiofrequency radiation and infrared and visible light.*
>
> *Although ELF radiation doesn't damage the DNA in cells the way ionizing radiation does and is generally thought to be safe, researchers are studying if there might be other ways that ELF radiation could somehow affect cancer risk.*

(https://www.cancer.org/cancer/risk-prevention/radiation-exposure/extremely-low-frequency-radiation.html, cited at p 10 of Exhibit 34).

However, as summarized in the above cited report from the American Cancer Society, the majority of studies have found not any strong links between ELF electric or magnetic fields and cancer. The International Agency for Research on Cancer (IARC), part of the World Health Organization (WHO) found "*limited*" or "*inadequate*" evidence of cancer from electric or magnetic fields (*Id*.)

Mr. Yapp included a list of studies regarding EMF and cancer (Exhibits 51 at 53). However, the majority of those studies addressed much higher energy powerlines and structures, 380 kV and higher, compared to the 115 kV lines proposed in this application and included in the American Cancer Society summary cited above.

Mr. Yapp also noted that his autistic son stops speaking when exposed to EMF. However, he did not provide any evidence regarding the levels of EMF that cause these effects or the distance between their home and the powerlines. As noted in the American Cancer Society article and the applicant's EMF publication (Exhibit 1 at 361) EMF levels decline rapidly with distance. EMF levels at the edge of transmission line rights-of-way are comparable to those produced by common household appliances.

Property Values:

Opponents submitted several studies showing reduced property values for homes near powerlines (Exhibits 37, 38, 39, 66, and 12 at 76). The applicant submitted a study which concluded that this project will have very little impact on property values because powerlines currently exist in the project area (Exhibit 2 at 351).

However, LUBA has held that property values are not relevant to the analysis of ZDO 1203.03(D). *Tylka v. Clackamas Cnty*., 34 Or LUBA 14, 29 (1998) (*"We agree with the county that potential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D),*

and thus the decision did not err in failing to consider potential loss of property values.") The hearings officer is bound by the holding in *Tylka*.

The causes of the reduced values identified in the opponents studies are relevant to this criteria, i.e., health effects, visual impacts, fire risk, etc., and are addressed individually in this Final Order.

Farming impacts

There is no evidence that the relatively low EMF or ELF levels generated by the proposed powerlines will impact bees or other livestock. No evidence was submitted regarding EMF/ELF impacts on livestock. Mr. Rockrohr cited three studies showing impacts of ELF on bees (Exhibit 70), but those studies were all based on high voltage lines that generate much higher ELF levels. The cited studies noted impacts on bees at ELF levels of microteslas (μT), which equates to 200 Milligauss [mG]. Based the applicant's EMF report, ELF levels will not exceed 70 mG beneath the distribution lines and 30 mG at the edge of the right-of-way of transmission lines (Exhibit 2 at 362). There is no evidence in the record that ELF levels generated by this project will have a measurable impact bees or other livestock.

Based on the applicant's noise analysis (Exhibit 2 at 447) the powerlines will not generate noise above the existing background traffic noise. Therefore, the hearings officer cannot find that noise from the project will impact livestock.

Opponents argued that farm equipment being operated and irrigation pipes being placed in fields near the project or travel beneath the right of way may contact the powerlines and injure farm workers. However, such impacts may occur under existing conditions as a result of the existing distribution lines. The transmission lines proposed with this project will be at higher elevations, further away from and less likely to come into contact with, vehicles and equipment operating on the ground. Therefore, the hearings officer finds that the proposed use will not increase the risk of electrocution.

Any crop height limitations imposed by the project already occur as there are existing powerlines along the majority of the project corridor. The proposed transmission lines will be at higher elevations than the distribution lines. Therefore, any crop height limits would be caused by the existing distribution lines.

The project will not result in field fragmentation. All of the poles and lines will be located within or adjacent to the existing right-of-way of SW Stafford Road; the project will not bisect existing fields. The applicant will compensate property owners for the value of lands impacted by easements for the limited number of poles located adjacent to the existing right-of-way. For the same reason the use will not impose access restrictions or limit pasture rotation. The existing SW Stafford Road limits the ability to move livestock or equipment across the right-of-way. This project will not impose any additional restrictions on these activities.

Mr. Kehoe argued, based on his experience as a residential developer, that soil instability and erosion issues from tree removal "*[w]ill result in the permanent loss of approximately 25% of the farmland along the proposed route.*" (Exhibit 54). However, the applicant will be required to obtain County approval of an erosion and sediment

control plan and install erosion control measures consistent with that plan prior to undertaking any grading or tree removal activities on the site (Section 470 of the Clackamas County Roadway Standards, which were noted in the pre-application conference summary (Exhibit 2 at 81). Prior utility permit approvals included such conditions (Exhibit 2 at 403, 412, and 413). Mr. Kehoe failed to provide any basis for why such measures will not function as intended and result in the volume of impact he asserts.

Farm stands associated with the Farmlandia Farm Loop are not listed as a primary use in the RRFF-5 zone. Commercial Activities that are in Conjunction with Farm or Forest Uses are only allowed as conditional uses in the RRFF-5 zone. ZDO Table 316-1. Therefore, alleged impacts to these uses are not relevant to this criterion.

Construction of the project may impact traffic on SW Stafford Road, including farm related traffic. However, such impacts are a result of construction, not the use itself, and are not relevant to this criterion.

Tree removal

The applicant proposed to remove up to 254 trees within the RRFF-5 zone.[6] The applicant argues that they could replace all of the exiting utility poles, without a conditional use permit and such a project would require removal of 204 trees. Upgrading this facility to allow transmission lines will only require the removal of 50 trees over the entire 5.9-mile corridor. However, such impacts are speculative and irrelevant. The applicant is only proposing to replace the existing poles in order to add transmission lines and that project will require removal of 254 trees. There is no suggestion that the applicant would actually remove those trees if transmission lines were not proposed.

Tree removal will change the visual and aesthetic character of the area to some extent. As one area resident described it, "*The character of travel through sequential varied treed and open spaces will be altered to travel along a monotonous clearing and alignment of transmission poles*" (Exhibit 32 at 4). However, the applicant will only remove trees on one side of the road and only within the right-of-way or easements. Trees located on the other side of the road and outside the right-of-way will remain.

Tree removal will also affect some adjacent properties, reducing the existing vegetative buffer between such properties and the road, thereby increasing the impact of sun exposure, traffic noise, and exhaust fumes. However, trees are not evenly distributed along the route. Some properties have relatively dense stands of trees adjacent to the road while others have no trees along their frontage (Exhibit 2 at 113-13). Properties with no trees will not experience any increased impacts. Properties with dense trees extending beyond the right-of-way will experience less impact than properties where trees are only located along the frontage, with the remainder of the property open lawn or field. However, as the applicant stated, "*The ability to operate a farm, live in a nearby residence, or have a functional commercial use is not substantially limited, impaired, or precluded by removing one or more trees along the street edge of that same property. The*

[6] Removal of trees in portions of the right-of-way within the EFU zone are not relevant to this conditional use permit application.

admiration of a tree or appreciation of its visual qualities is not sufficient basis to require its preservation or determine that its removal substantially limits the ability to carry out that farming, residential, or commercial use." (Exhibit 2 at 48).

The impact of tree removal on wildlife is addressed below.

Wildlife and natural resources

Powerlines can pose hazards for birds and wildlife, including bird strikes with wires, noise, and EMF exposure. Removal of trees within the powerline corridor will eliminate wildlife habitat and bird nesting opportunities in that area. Area residents report observing a number of "*[t]hreatened species such as bald eagles and spotted owl and sensitive species such as peregrine falcon, Oregon spotted frog and pygmy rabbit*" on their properties near SW Stafford Road (Exhibit 4 at 4). Neighbors also "*[n]oticed more coyotes, hawks and deer who have been displaced*" by clearing and tree removal related to improvements to SW Stafford Road (Exhibit 8).

However, the project area, located adjacent to busy SW Stafford Road, with higher traffic volumes and significant noise, is unlikely to provide important habitat. Trees outside of project area will remain and continue to provide habitat away from the road and powerlines. With the exception of the Tualatin River crossing, the site is note located in or near a designated habitat area.

Primary uses allowed in the RRFF-5 zone include "*Public and private conservation areas and structures for the conservation of water, soil, forest, or wildlife habitat resources*" and "*Fish or wildlife management programs*." (ZDO Table 316-1). However, there is no evidence of any existing wildlife conservation or management programs in the area or that such programs are likely to occur in areas affected by this powerline project, given the existence of busy SW Stafford Road and the limited wildlife habitat available in the existing rural residential surrounding the project site.

There are existing powerlines on the majority of the powerline corridor, which currently present a risk of bird strikes and electrocution. This project will increase the number of wires and include higher voltage transmission lines. However, such risks exist throughout the region. There is no evidence that this project poses a significantly higher risk to birds and wildlife than other transmission lines. The applicant will install bird protection measures consistent with its Avian Protection Plan (Exhibit 2 at 356). Proposed condition of approval 7 in the Staff Report prohibits tree removal during the nesting season, unless tree is surveyed by a wildlife biologist.

There is no evidence to support the existence of any threatened or endangered species in this area. Bald eagles are no longer listed as threatened or endangered. Therefore, eagle habitat is not subject to additional protections. But raptors, including eagles, and other migratory birds are protected by the migratory bird treaty act, which prohibits "*incidental take*" of such species. This rural residential area is unlikely to provide habitat for spotted owl, Oregon spotted frogs, or pygmy rabbits and there is no evidence in the record to support the existence of such species other than opponents' unsupported testimony.

Studies in the record regarding EMF/ELF impacts on wildlife addressed high voltage powerlines (Exhibit 64 at 32). As discussed above, there is no evidence that the 115 kV

transmission lines proposed with this project will generate significant EMF/ELF impacts beyond the powerline right-of-way. Noise levels from powerlines (Exhibit 2 at 458, Exhibit 37 at 36, and Exhibit 66 at 72) are well below the existing ambient noise levels within the powerline corridor, ranging from 39 to 93 dB (Exhibit 2 at 447) and in average residential areas (Exhibit 66 at 86). Traffic on SW Stafford Road is the primary noise source in the area (Exhibit 2 at 447).

The powerlines will extend across the Tualatin River, which is designated a Habitat Conservation Area ("HCA") and floodplain. The applicant proposed to utilize taller poles in this area to allow wires to span the river (Exhibit 2 at 8). The poles appear to be outside of the floodplain (staff and applicant testimony) and designated habitat areas (Metro HCA maps). However, there is no evidence in the record demonstrating that the poles are actually outside of the floodplain. Staff requested such evidence (Exhibit 44a) but the hearings officer did not find it in the record. Therefore, HCA, WQRA and floodplain permits will be required if the actual location of the poles and/or vegetation removal intrudes into these areas. More detailed plans for construction and vegetation removal within the Habitat Conservation Areas will need to be provided to the Planning and Zoning office to determine the applicable land use review. See condition 8 of this Final Order.

The project will have no impact on Saum Creek, which is located west of and outside of the project area (Exhibit 63 at 9 and 143).

Powerline noise

There is no evidence that the proposed transmission lines will generate any noise that is detectable above existing background noise levels. As discussed in the applicant's noise analysis (Exhibit 2 at 447), noise attributable to transmission lines was not detectable at a "*control site*" in West Linn where transmission lines pass through an open space with a walking path and well below the existing background noise levels along SW Stafford Road. Studies cited by opponents addressed noise from high voltage powerlines, which carry much higher voltages than the 115 kV transmission lines proposed with this project (See Exhibit 66, Attachment 7 and Exhibit 12 at 76, 81). However, noise levels observed in those studies were consistent with the applicant's study. The article titled "*Should You Be Worried About EMF Exposure*" noted that "*High-voltage power lines and substations can produce a continuous low hum or buzzing sound. Low-voltage power lines, typically insulated, will produce little to no noise, and they may not pose the same level of noise-related concerns*." (Exhibit 66, Attachment 12). Figure 3 of the article titled "*Electric and Magnetic Fields and Audible Noise Report*" noted a maximum noise level of 18.7 dBA within a powerline right-of-way, just over 16 dBA at edge of ROW and declining w distance from ROW (Exhibit 66, Attachment 11). These noise levels are below average daytime sound levels in residential areas, which average 45 dB indoors and 55 dB outdoors (Exhibit 66, Attachment 13). A CH2M Hill study predicted noise levels below 20 dB (Exhibit 37 at 36). Another CH2M Hill study submitted by the applicant modeled sound levels for a 115 kV transmission line and found "*negligible*" sound levels in dry weather and 16 to 19 dBA in wet weather (Exhibit 2 at 458).

Vehicle traffic on SW Stafford Road is the primary noise source in the area, ranging from 39 to 93 dB (Exhibit 2 at 448). However, the proposed use will not increase traffic on SW Stafford Road.

Views and Aesthetics:

As described by the federal Bureau of Land Management ("BLM), "*Visual impacts are changes to the scenic attributes of the landscape brought about by the introduction of visual contrasts (e.g., development) and the associated changes in the human visual experience of the landscape*." (Exhibit 55 at 172).

As noted above, clearing within the powerline corridor will alter the existing visual character of the area. Under existing conditions drivers on SW Stafford Road will see a mix of trees and open areas. Clearing for the powerlines will remove trees, increasing the amount of open areas. However, it could be argued that clearing will create more panoramic views of the landscape. Therefore, the impact of that change is subjective depending on the viewer's preference for forested or open rural views.

However, as staff noted in the nonconforming use decision, "*The added height, larger-diameter poles, and additional wires [proposed with this project] combine to create a far more industrial aesthetic than the current power lines*…" (Exhibit 57 at 27). This is well illustrated by the photo simulations submitted by the applicant (Exhibit 2 at 113-136) and opponents (Exhibit 42 and Exhibit 66 at 9-22). The hearings officer finds that Mr. Wagner's photo simulations are accurate as they merely cropped versions of the applicant's simulations. The applicant's simulations illustrate views from a relative distance while Mr. Wagner's show a closer view. Drivers on Stafford Road will experience both views as they travel along the roadway.

The project will also impact views from abutting homes and properties. Although the proposed facilities will replace existing utility poles and lines that currently affect these views, the taller, wider poles and additional wires will increase the visual impact. However, these facilities will not completely obscure such views as a building or tall trees would. The poles will be spaced an average of 250 feet apart and transmission wires will be space between eight and ten feet apart (Exhibit 2 at 97-98). Therefore, the new poles and wires will consume a relatively small portion of the larger viewing shed. In addition, the existing poles and powerlines, which are located at lower elevations, already impact views in this area. The new wires will be elevated above the 25-foot building height limit allowed in the RRFF-5 zone, which will limit their impact on views from residences, as the wires will be above the elevation of second floor windows (*Id.*).

Conclusion:

The applicant bears the burden of proof to demonstrate compliance with all of the applicable approval criteria, including that the use will not "*[s]ubstantially limit, impair, or preclude the use of surrounding properties for primary uses.*" (ZDO 1203.03(D). However, this does not require the applicant to "*prove a negative*." *Mission Bottom Ass'n, Inc. v. Marion Cnty.*, 32 Or LUBA 56, 61 (1996). As the applicant put it (Exhibit 74 at 12), they are only required to address likely/foreseeable impacts, as well nonspeculative impacts raised by others, to show that it is more likely than not that those potential

impacts will not result in the standard at issue being violated. *Id.*; *accord Gutoski v. Lane Cnty.*, 34 Or LUBA 219, 231 (1998), *aff'd*, 155 Or App 369, 963 P2d 145 (1998). The hearings officer finds, based on the preponderance of the evidence in the record, that in this case the applicant sustained its burden of proof that the application complies with ZDO 1203.03(D). Although the evidence regarding some issues is conflicting the hearings officer finds that the applicant's evidence is the most persuasive, based on the discussion in this Final Order.

Many of the cited impacts – noise, arcing, health effects, wildlife and livestock, will be higher in close proximity to the powerline corridor and decrease with distance, especially at the outer limits of the ½ mile "*surrounding area*" described by the applicant. Others, primarily fire, may extend beyond the ½ mile analysis area. For purposes of this criterion the hearings officer considered potential impacts from both perspectives, close proximity to the powerline corridor and within ½ mile of the project.

The hearings officer finds that the proposed use will alter (make different) the visual and aesthetic character (the attributes and features that make up and distinguish, the surrounding area; SW Stafford Road and properties abutting the project corridor). As stated in the nonconforming use decision, the visual simulations in the record "*[c]learly demonstrate that the project will have significant visual impacts in comparison to the existing lines. The added height, larger-diameter poles, and additional wires combine to create a far more industrial aesthetic than the current power lines, an aesthetic that is inconsistent with the current visual identity of the area*." (Exhibit 57 at 27). The proposed tree removal will also change the visual character of the area, increasing views of the powerlines and creating more open views for persons traveling on SW Stafford Road as well as for the owners and residents of some properties.

However, unlike the standard at issue in the nonconforming use decision, which prohibits any greater adverse impact to the neighborhood, alteration of the character of the area alone is not sufficient to deny this project. In order to approve this conditional use application the hearings officer must find that the alteration to the character of the area, individually and collectively, will not considerably (significantly, or greatly) limit (bound, restrain, or confine), impair (diminish in function, ability, or quality : weaken or make worse), or preclude (make impossible) the use of surrounding properties, ZDO 12003.03(D). The hearings officer finds that this standard is met based on the discussion below.

The visual and aesthetic impacts of the project will not substantially limit, impair, or preclude the use of surrounding properties. Although the area may look different after the project is completed, surrounding properties can continue to be used for residences, farms, and other permitted uses. Transmission lines exist in relative harmony with these uses throughout the region.

Wildfire is a concern in the surrounding area under existing conditions. The topography of the area, lack of public water and fire hydrants, dry farmlands, and high winds are existing conditions. The existing powerlines pose a potential fire risk if they come into contact with vegetation growing near the lines or if they fall to the ground due to heavy winds, vehicles striking power poles, or branches or other debris falling on the lines. This

project will not change those conditions. The project will add more and higher voltage lines, but those lines will be at higher elevations where they are less exposed to contact with vegetation or flying debris. Vegetation clearing proposed with this project will further reduce the risk of fire. Electrical and monitoring equipment which the applicant will install with this project will reduce the potential for fires by automatically shutting down the system when a short is detected from any cause.

There is no evidence that the 115kV transmission lines proposed with this project pose any health concerns to humans or animals. Although some people may prefer not to live, work, or worship near such powerlines, those concerns are subjective and limited to specific individuals. They will not limit, impair, or preclude the use of surrounding properties for any uses permitted in the RRFF-5 zone.

The existing powerlines impose some limits on agricultural uses in the area, requiring that farm workers use caution when moving vehicles and equipment beneath the lines and precluding the planting of tall trees in close proximity to the lines. The additional powerlines proposed with this project will not increase those impacts as they will be located at higher elevations than the existing powerlines.

Noise from the powerlines will not be detectable above existing background noise levels generated by traffic on SW Stafford Road.

Although the use will alter the visual character of the surrounding area, it will not substantially limit, impair, or preclude the use of that area for permitted uses.

Clearing for the powerlines will eliminate habitat for birds and wildlife. However, the project area, located in an existing utility corridor adjacent to Stafford Road in a developed rural residential area, provides limited habitat value. The impacts of the proposed clearing will be limited to that corridor, leaving habitat outside of the corridor undisturbed. The applicant will remove trees outside of nesting season in order to limit impacts to birds.

Powerlines can pose hazards to birds and other wildlife, but those hazards occur with the existing powerlines. The applicant will install measures to protect birds consistent with its Avian Protection Plan, which will limit impacts from the added transmission wires.

Although the use will change the visual character of the area to some extent, those changes will not limit, impair, or preclude use of surrounding properties for permitted uses.

This criterion is met.

(E) *The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.*

The following Clackamas County Comprehensive Plan provisions were referenced in the application or testimony, listed in numerical order:

Chapter 3: NATURAL RESOURCES AND ENERGY

Statement that Citizen involvement is essential in the governmental process to promote the general health and welfare of the total

community. New approaches must be developed by local government to effectively involve citizens in the planning and decision-making process. Positive accomplishments can be achieved.

AGRICULTURE

AGRICULTURE GOALS

- *Conserve scenic areas, open space and wildlife habitats.*

WILDLIFE HABITATS AND DISTINCTIVE RESOURCE AREAS

Statement that Visual corridors along scenic roadways, rivers, and major arterials, the prominent slopes in the urban areas, and other distinctive areas are landscapes highly sensitive to alteration and development.

3.K Wildlife Habitats And Distinctive Resource Policies

3.K.8 Protect areas of high visual sensitivity and/or unique natural areas by requiring development review for any development which would substantially alter the existing landscape, as specified in the Land Use Chapter of the Plan. The purpose is to integrate development with natural features, minimizing any adverse impacts.

3.K.9 Improve scenic quality of areas impacted by urban blight, working toward the following objectives:

…

3.K.9.3 Placing of utility service lines underground.

3.K.11 Protect and conserve sensitive bird resources to avoid degradation of habitat by requiring development review for any development which could potentially result in adverse impacts to sensitive bird nesting and rearing areas. See maps 3-3, Molalla State Park Great Blue Heron Rookery, and 3-4, Stevens Great Blue Heron Rookery.

Table 3-1 Compatibility criteria for wildlife sensitive areas

3.M Energy Sources and Conservation Policies:

3.M.1 Cooperate with the state legislature and appropriate state and federal agencies (Public Utility Commission, Geology and Mineral Industries, Forest Service, etc.) in programs to encourage alternative energy source development. Such programs will focus on (a) geothermal resources in the Cascades; (b) single

building solar and wind conversion technologies; and (c) energy recoverable from solid wastes.

3.M.1.1 Support exploration, research and development of geothermal resources consistent with environmental protection policies of this Plan. The County also will cooperate in the development of any necessary transmission facilities designed to bring such energy to local industries and residences.

3.M.8 Support and facilitate the placement of electrical lines underground to increase infrastructure resiliency and promote wildfire mitigation.

Chapter 4 LAND USE

URBANIZATION

4.E Urban Reserve Area Policies.

4.E.2 The following policies apply to Urban Reserve areas established pursuant to OAR660, Division 27, as shown on Map 4-9:

…

4.E.2.3 The County shall not amend the Comprehensive Plan or Zoning and Development Ordinance or the Comprehensive Plan Map or zoning designations:

4.E.2.3.1 To allow within Urban Reserve areas, new uses that were not allowed on the date the Urban Reserve areas were designated, except those uses authorized by amendments to the Oregon Revised Statutes or Oregon Administrative Rules enacted after designation of Urban Reserve areas.

4.E.2.3.2 To allow within Urban Reserve areas, the creation of new lots or parcels smaller than allowed on the date Urban Reserve areas were designated, except as authorized by amendments to the Oregon Revised Statutes or Oregon Administrative Rules enacted after designation of Urban Reserve areas.

Chapter 5: TRANSPORTATION SYSTEM PLAN

TSP GOALS

Goal 1: Provide a transportation system that optimizes benefits to the environment, the economy and the community.

Goal 2: Plan the transportation system to create a prosperous and adaptable economy and further the economic well-being of businesses and residents of the County.

Goal 3: Tailor transportation solutions to suit the diversity of local communities.

Goal 4: Promote a transportation system that maintains or improves our safety, health, and security.

Goal 5: Provide an equitable transportation system.

Goal 6: Promote a fiscally responsible approach to protect and improve the existing transportation system and implement a cost-effective system to meet future needs.

5.H Rural Tourism Policies

5.H.1 ***Rural*** *Encourage agri-tourism and other commercial events and activities that are related to and supportive of agriculture, in accordance with the provisions of ORS 215. Mitigation of traffic impacts and other event impacts may be required to reduce the effects of these limited land uses on the County road system.*

5.I Rural Scenic Roads Policies

5.I.2.1 Scenic roads shall have strict access control on new developments.

5.I.2.2 Scenic roads should have shoulders wide enough for pedestrians or bicycles, or a separated path where feasible and when funding is available.

5.I.2.3 Turnouts shall be provided where appropriate for viewpoints or recreational needs.

5.I.2.4 Design review of developments adjacent to scenic roads shall require visual characteristics and signing appropriate to the setting.

5.I.2.5 Buildings shall be set back a sufficient distance from the right-of-way to permit a landscaped or natural buffer zone.

5.I.2.6 Parking areas adjacent to scenic roads shall be separated from the right-of-way by a landscaped buffer.

5.I.2.7 Any frontage roads adjacent to scenic roads shall be separated by a vegetative buffer where feasible

5.I.2.8 Underground placement of utility service lines shall be required unless prohibited by the utility service provider.

Chapter 7: PUBLIC FACILITIES AND SERVICES

PUBLIC FACILITIES GOALS

…

- *Provide for the location and development of drinking water facilities to support existing and future land development.*

…

Chapter 9 Open Space, Parks, And Historic Sites

Statement: The County must take the lead to preserve the resources and develop facilities which will assure that a high quality of life is available to all County residents.

OPEN SPACE, PARKS, AND HISTORIC SITES GOALS

Goal 1: Protect the open space resources of Clackamas County.

Goal 2: Improve the environmental quality of the northwest urban area.

Goal 3: Provide land, facilities, and programs which meet the recreation needs of County residents and visitors.

Goal 4: Establish an equitable means of financing parks and recreation facilities and programs.

Goal 5: Preserve the historical, archaeological, and cultural resources of the County.

9.A Open Space Policies

9.A.3 Protect open space resources outside the urban area through the policies of the Land Use and the Natural Resources and Energy chapters of the Plan…

Chapter 10: COMMUNITY PLANS AND DESIGN PLANS

The following Community Plans and Design Plans are included in Chapter 10:

1. *Mount Hood Community Plan*
2. *Kruse Way Design Plan (Repealed 03/01/2014, per Ordinance ZDO-246)*
3. *Sunnyside Village Plan*
4. *Clackamas Industrial Area and North Bank of the Clackamas River Design Plan*
5. *Clackamas Regional Center Area Design Plan*
6. *Sunnyside Corridor Community Plan*
7. *McLoughlin Corridor Design Plan*

Chapter 11: THE PLANNING PROCESS

> *The purpose of Clackamas County's comprehensive planning process is to establish a framework for land use decisions that will meet the needs of County residents; recognize the County's interrelationships with its cities, surrounding counties, the region, and the state; and ensure that changing priorities and circumstances can be met. Coordination with other governmental agencies and refinement of this Plan and County ordinances is essential to achieve this end.*

Findings:

As stated by LUBA and the Court of Appeals, "consistency" with a comprehensive plan refers to the alignment of the project with the plan as a whole, which typically requires "*some weighing and balancing of competing policies directions embodied in the applicable plan provisions*." *Yamhill Creek Solar, LLC v. Yamhill Cnty.*, 78 Or LUBA 245, 251 (2018) and *Waker Assocs., Inc. v. Clackamas Cnty.*, 111 Or App 189, 193-95, 826 P2d 20 (1992). The hearings officer finds that the proposed development is, on balance, consistent with the applicable goals and policies of the Comprehensive Plan, based on the following findings.

The general statements at the beginning of each chapter and subchapter are themselves are not "*goals and policies*" and therefore are not relevant to this criterion. These general statements are implemented through the "*goals and policies*" of the comprehensive plan.

Chapter 3: Natural resources and energy

Policy 3.K.8 regarding protection of areas of high visual sensitivity and/or unique natural areas

This policy requires "*[d]evelopment review for any development which would substantially alter the existing landscape, as specified in the Land Use Chapter of the Plan.*" This application for a conditional use permit is subject to development review and compliance with the approval criteria for this use will ensure compliance with this policy, minimizing adverse impacts from the proposed development through the use of conditions of approval.

Policy 3.K.9.3 regarding "*Placing of utility service lines underground*"

ZDO 202 defines utility service lines as "*A utility line that ends at the point where the utility service is received by the customer. A service line is distinguished from larger utility lines including, but not limited to, distribution lines, mainlines, transmission lines, and trunk lines.*" The proposal being considered through Z0282-25 is for a transmission line, which is expressly excluded from the definition of a "*utility service line*" addressed by this policy. In addition, this policy applies to "*urban blight.*" The project area is in a rural area. Therefore, 3.K.9.3 is not applicable.

3.K.11 regarding sensitive bird resources.

This policy requires protection of the sensitive bird nesting and rearing areas identified in Comprehensive Plan Maps 3-3 and 3-4. These maps identify the "*Molalla State Park Great Blue Heron Rookery*" and the "*Stevens Great Blue Heron Rookery*." This site is not located in or near either of those areas. Therefore, this policy is inapplicable.

Table 3-1 prohibits vegetation clearing within 50 yards of raptor nests. There is no evidence of any raptor nests in or within 50 yards of the project corridor and such nests are unlikely to occur in that area given the site's proximity to the heavily traveled SW Stafford Road. However, the applicant should be required to conduct a survey to determine whether such nests exist prior to undertaking any vegetation clearing in the RRFF-5 zoned portions of the site. A condition of approval is warranted to that effect. The hearings officer notes that federal law may allow the removal of unoccupied raptor nests outside of nesting season. Therefore, the applicant could avoid this provision by removing nests if allowed by state and federal laws.

3.M.1.1 regarding support for the exploration, research and development of geothermal resources.

The electrical transmission lines proposed with this application will have no impact on the exploration or research of geothermal resources. This project could potentially facilitate the development of such resources by transmitting electrical power produced by such facilities. The proposed development is not inconsistent with this policy.

3.M.8 regarding undergrounding of electrical lines.

This policy only requires that the County "*support and facilitate*" undergrounding of electrical lines. It does not require undergrounding. Undergrounding the proposed electrical lines would "*[i]ncrease infrastructure resiliency and promote wildfire mitigation*" (Policy 3.M.8). As the applicant noted, undergrounding the line was rejected due significant costs that would be borne by power customers, permitting, design, and installation challenges, and increased impacts on abutting properties, vegetation, and resource lands (Exhibit 2 at 23). The hearings officer finds, based on the applicant's analysis, that undergrounding would result in greater conflicts with the comprehensive plan than the proposed overhead lines. As stated in this section of the Plan, "*There is very little the County can do to affect the supply or cost of imported energy*." (Comprehensive Plan at 3-29). However, requiring undergrounding of this facility would affect the cost of energy by increasing the cost of this project, which "*[w]ould be borne by all customers*" (Exhibit 2 at 23). In addition, the impacts to resource lands caused by the wider easements, clearing and excavation required to underground this system would conflict with other goals and policies of Plan. Therefore, the hearings officer finds that, on balance, this application is consistent with the overall goals and policies of the comprehensive plan.

4.E.2.3 regarding planning and zoning amendments within urban reserve areas.

This policy is inapplicable, as this project will not amend the comprehensive plan, ZDO, comprehensive plan map, or zoning designations.

Chapter 5 TSP

This project will have no impact on the transportation system. Therefore, the Chapter 5 TSP goals are inapplicable.

Policy 5.H.1 regarding encouraging agri-tourism,

This policy requires action by the County to encourage agri-tourism and other commercial events and activities that are related to and supportive of agriculture. The County can implement this policy through zoning designations and the ZDO. This policy does not impose any restrictions on development beyond the requirements of the ZDO. As noted in the Staff Report, this policy also notes that "*Mitigation of traffic impacts and other event impacts may be required to reduce the effects of these limited land uses on the County road system.*" Road improvements planned and implemented in the County are supposed to mitigate traffic and other event impacts to the road system as a way to support and encourage agri-tourism pursuant to Policy 5.H.1. This project is not a road improvement project and will not increase traffic congestion or vehicle traffic. Therefore, the project is consistent with this policy.

5.I regarding scenic roads.

The section of SW Stafford Road between the City of Lake Oswego and SW Mountain Road is designated a "*scenic road*" (Policy 5.I.3). As discussed above, this project will alter the character of the of the surrounding area to some extent. However, the comprehensive plan does not prohibit transmission lines along scenic roads. If the Board had intended to impose such a prohibition it would have said so by using the terms "*prohibit*" or "*shall not*" as it did in other sections of the comprehensive plan (See e.g., Policy 3.C.2.4, Policy 3.C.6.5, Policy 3.L.2, Policy 3.B.1.5, Policy 3.C.2.2, Policy 3.C.3.3, Policy 3.C.6.7, Policy 3.F.1, and many others. The determination that transmission lines are not prohibited on scenic roads is supported by the fact that there are existing 115kV transmission lines on scenic roads in the County; the section of S. Redland Road that are similar to the lines proposed with this application (Exhibit 2 at 65 and 67) and on the scenic road section of SW Stafford Road between the Rosemont substation and SW Boreland Road (applicant testimony). Eight other scenic roads include lower voltage transmission lines. Therefore, the hearings officer cannot find that transmission lines conflict with the goals and policies for scenic roads.

Scenic road policies 5.I.2.1-5.I.2.3 relate to the design of and access to scenic roads and are inapplicable to this development which will not alter SW Stafford Road or require additional roadway access.

Design review is not required for institutional uses in the RRFF-5 zone (ZDO 1102.01). Therefore, policy 5.I.2.4 is inapplicable.

Policy 5.I.2.5 is inapplicable as no buildings are proposed.

Policy 5.I.2.6 is inapplicable as no parking areas are proposed.

Policy 5.I.2.7 is inapplicable as no frontage roads are proposed.

As noted above, this project does not involve placement of "*utility service lines*." Therefore, Policy 5.I.2.8 is inapplicable.

Chapter 7 Public facilities

The applicant identified that the need for additional transmission capacity is partly related to a new water treatment facility, which is a drinking water facility to support existing and future land development. Therefore, the proposed use is consistent with the above quoted goal of Chapter 7.

Chapter 9 Open space, parks, and historic sites

The project is not inconsistent with the goals of Chapter 9. The site is not designated open space. Therefore, Goal 1 is inapplicable. The site is not located in the urban area. Therefore, Goal 2 is inapplicable. The proposed development will allow for the future construction of bicycle and pedestrian facilities within the SW Stafford Road right-of-way, which will help meet the recreation needs of County residents and visitors. The applicant has no control over the financing of parks and recreation facilities and programs. Therefore, Goal 4 is inapplicable. The historic resource goals and policies are implemented through ZDO 707, which only applies to County designated Historic Landmarks, Historic Districts, and Historic Corridors (ZDO 707.01.A and 707.02.A). Listing on the Oregon Historic Sites Database does not make such sites subject to ZDO 707. There are 14 properties are on and 8 properties adjacent to SW Stafford Road that are listed on the Oregon Historic Sites Database (Exhibit 32 at 12). However, there is no evidence of any County identified historical, archaeological, and cultural resources within the project area. Therefore, Goal 5 is inapplicable.

Chapter 10 Community plans and design plans

The site is not located in any of the community or design plan areas listed in Chapter 10. Therefore, this Chapter is inapplicable.

Chapter 11 The planning process

No changes to the comprehensive plan, comprehensive plan, zoning, or zoning regulations are proposed with this application. Therefore, Chapter 11 is inapplicable.

This criterion can be met as conditioned.

> ***(F)*** *The proposed use complies with any applicable requirements of the zoning district and any overlay zoning district(s) in which the subject property is located, Section 800, Special Use Requirements, and Section 1000, Development Standards.*

Finding:

The proposed use complies with the applicable requirements of the RRFF-5 zoning district based on the findings above.

Section 800 SPECIAL USE REQUIREMENTS - There are no sections in the 800s that apply to power transmission lines.

Section 1000 DEVELOPMENT STANDARDS - As stated in ZDO 1001 "*Section 1000 applies to all development, as identified in Table 1001-1, Applicability of Section 1000.*" Although utility facilities, are an institutional use, footnote 2 of Table 1001-1 states "*Stormwater management facilities permitted as an accessory or primary use; utility cabinets that comply with Section 830, Utility Cabinets; utility facilities in road rights-of-*

way; and utility lines are not subject to Section 1000." Therefore, there are no sections in the 1000s that apply to the proposed power transmission lines.

The project will cross the following overlay districts: Habitat Conservation Area District (HCAD) (ZDO 706), River And Stream Conservation Area (RSCA) (ZDO 704), And Floodplain Management District (FMD) (ZDO 703).

The proposed utility corridor maintenance and alteration would be an exempt use in the HCA per Subsections 706.04(E) & (F), if the replacement and alteration of the poles do not impact more than 500 square feet of the HCA. Therefore, depending on the extent of impacts, if any, within the HCA, a few transmission poles may need HCA permits (see page 86 and 90 of Exhibit 2). In addition to the poles spanning the Tualatin River, vegetation clearing for the poles on 21E31D 00300 would be subject to the HCA requirements.

The Tualatin River is designated a "*Principal River*" (ZDO 704.03(A)) and requires a 100-foot setback for "*[s]tructures exceeding 120 square feet or 10 feet in height*" and which are located outside of the UGB (ZDO 704.04(A) and 704.03(F)). However, "[*p]ower lines that are necessary for crossing streams, provided they do not create barriers to fish movement and that adverse impacts are mitigated*" ZDO 704.05(A)(4). The proposed powerlines will be elevated well above the water level of the Tualatin River. Therefore, this powerline project is exempt from the setback requirements of ZDO 704.

Disturbance of land near the Tualatin River within the floodplain is subject to a floodplain development permit and potentially State and Federal permitting. As noted above, there is no evidence in the record demonstrating that the proposed poles will be located outside of the floodplain. The applicant should be required to submit such evidence or obtain a floodplain permit. This is required by condition of approval 8.

This criterion can be met as conditioned.

1203.05 APPROVAL PERIOD AND TIME EXTENSION

A. Approval of a conditional use is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.

1. Implemented means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained. A major development permit is:

a. A building permit for a new primary structure that was part of the conditional use approval; or

b. A permit issued by the County for parking lot or road improvements required by the conditional use approval.

B. If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension.

Finding: This is informational only.

***1203.06 DISCONTINUATION** - If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void.*

Finding: This is informational only.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that File No. Z0282-25 and Z0313-25 (PGE Stafford Road) should be approved, because the applications do or can comply with applicable standards of the Clackamas County ZDO, provided they is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Z0282-25 and Z0313-25 (PGE Stafford Road) subject to the following conditions:

Conditions of Approval:

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on July 9, 2025 and additional documents for Z0313-25 submitted on July 30, 2025. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.

   The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). During this four year period, the approval shall be implemented, or the approval will become void.

Implemented means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained. A major development permit is:

a. A building permit for a new primary structure that was part of the conditional use approval; or

b. A permit issued by the County Engineering Division for work in the right of way or road improvements required by the conditional use approval.

(ZDO 1203.05(A)(1).

If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension.

(ZDO 1203.05(B).

2. If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void. [ZDO 1203.06]
3. The right of way beneath transmission line shall include language that would allow for the future construction of bicycle and pedestrian facilities within the right-of-way to support the Comprehensive Plan policies for Scenic Roads. ZDO 1203.03.E and 1203.03.B.
4. If the utility facility will be responsible for restoring the farmland when the substation is no longer in use for generating power, and has not been used by a provider use at the Rosemont Substation site is discontinued for a period of five (5) years, per the standards of Subsection ZDO 1203.06, the owner shall restore the site to be used as farmland. ZDO 1203.06.
5. The system shall be hardened against wildfire impacts through the use of ductile iron poles as recommended in the Wildfire Mitigation Plan. ZDO 1203.03.D
6. For protection of birds, regulated tree and vegetation shall occur between September and January, or after a tree is surveyed by a wildlife biologist. Installation of avian protection on all equipment is required. ZDO 1203.03.D
7. More detailed plans for construction and vegetation removal for poles within the Habitat Conservation Areas, and Floodplain, will need to be provided to the Planning and Zoning office to confirm exemption from ZDO 703 and ZDO 706. Details will be provided about the installation of poles D2121C-1504, D2121C-

32, and D2121C-34 on either side of the Tualatin River and vegetation clearing on the State ID 21E31D 00300.

8. Prior to undertaking any tree removal or vegetation clearing the applicant's wildlife biologist shall survey the project area and land within 50 yards of project area for the presence of raptor nests and tree removal and vegetation clearing shall be prohibited clearing within 50 yards of any raptor nests that are identified by the survey.

DATED this 4th day of November 2025.

Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "*shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final*." This decision will be "*final*" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).