

Open Record Exhibit OR-1E

Public Testimony - Counsel

From: [Jeffrey L. Kleinman](#)
To: [Louisa Bruce](#); [Maitreyee Sinha](#)
Subject: [EXTERNAL] Re: Casefile L2500161-Blackberry Grove Energy Storage Project
Date: Thursday, November 13, 2025 3:49:18 PM
Attachments: [HEARINGS OFFICER OPEN RECORD LT 11-13-25.pdf](#)

Hi Maitreyee,

I am attaching the open record letter of counsel for No Batteries in Backyards for inclusion in the record in this proceeding.

Please confirm receipt.

Thank you very much.

Jeff

Jeffrey L. Kleinman
Attorney at Law
The Ambassador
1207 SW Sixth Avenue
Portland, OR 97204
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On Monday, October 27, 2025 at 12:09:43 PM PDT, Maitreyee Sinha <maitreyee_sinha@washingtoncountyor.gov> wrote:

I'll get back to you on this, likely tomorrow.

Thanks,

Maitreyee Sinha | Senior Planner
503-846-3835 maitreyee_sinha@washingtoncountyor.gov

The counter lobby is open Monday, Tuesday, Wednesday, and Thursday 8AM to 4PM.

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Please submit planning-related questions to LUTDEV@co.washington.or.us.

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From: Jeffrey L. Kleinman <kleinmanjl@aol.com>
Sent: Monday, October 27, 2025 12:06 PM
To: Louisa Bruce <Louisa_Bruce@washingtoncountyor.gov>; Maitreyee Sinha <Maitreyee_Sinha@washingtoncountyor.gov>
Cc: Stephen Roberts <Stephen_Roberts@washingtoncountyor.gov>; SreeVamshi Reddy <SreeVamshi_Reddy@washingtoncountyor.gov>
Subject: Re: [EXTERNAL] Casefile L2500161-Blackberry Grove Energy Storage Project

Hi Maitreyee,

I neglected to ask how much time will be allocated at the commencement of opposition testimony for an organized presentation by counsel and perhaps a community leader. Please let me know.

Thank you.

Jeff

Jeffrey L. Kleinman

Attorney at Law

The Ambassador

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On Monday, October 27, 2025 at 11:44:25 AM PDT, Maitreyee Sinha <maitreyee_sinha@washingtoncountyor.gov> wrote:

Hello Jeff, please send the materials to me and Louisa Bruce (included on this email). Louisa will coordinate with our IT staff to have it ready for presentation.

Thank you,

Maitreyee Sinha | Senior Planner
503-846-3835 maitreyee_sinha@washingtouncountyor.gov

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From: Jeffrey L. Kleinman <kleinmanjl@aol.com>
Sent: Friday, October 24, 2025 3:36 PM
To: Maitreyee Sinha <Maitreyee_Sinha@washingtoncountyor.gov>; Stephen Roberts <Stephen_Roberts@washingtoncountyor.gov>
Subject: [EXTERNAL] Casefile L2500161-Blackberry Grove Energy Storage Project

Hi Maitreyee and Stephen,

In preparation for next Thursday's hearing in the above matter, my clients intend to provide a numbered witness list and a PowerPoint synced to the sequence of testimony. In order to keep things organized and moving along, they would like to know how best to set this up with staff early in the week. Could you please provide contact info and guidance for this purpose?

Thank you kindly.

Jeff

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November 13, 2025

**Via email to maitreyee_sinha@washingtoncountyor.gov and
Louisa_Bruce@washingtoncountyor.gov**

Land Use Hearings Officer
Washington County
156 North First Avenue, Suite #350-13
Hillsboro, Oregon 97124-3072

Re: Casefile L2500161-SU/D/PLA (Blackberry Grove LLC)

Dear Hearings Officer,

As previously stated, the undersigned counsel represent No Batteries in Backyards (“No Batteries”), a community group consisting of homeowners and residents who would be most directly affected by the approval of the above application. This letter comprises a part of our client’s initial open record submissions, and supplements our letter of October 30, 2025. It is primarily intended to further address the county’s definition of “Public Utility” in CDC 430-105, and the Code’s criteria relating to compatibility.

We would also especially commend the open record submissions (including media) of Todd Baird and Dirk Knudsen regarding the characteristics of the Bendemeer subdivision to the Hearings Officer. They illustrate and serve to further explain matters set out here.

///

A. The Definition of Public Utility.

As a preliminary matter, the Code actually provides its own interpretative guidance. Among its “General Provisions,” CDC 1.04.030 provides as follows:

1.04.030 - Interpretation of language.

All words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

CDC 430-105 defines Public Utility as follows:

430-105 - Public Utility

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

(Emphasis added.) All the subsections will follow CDC 430-105 are premised upon the applicant first qualifying as a Public Utility as defined above, in the first place.

The fundamental premise of this definition, based upon “the common and approved usage” of the underscored language, is that at the time of making application, the applicant is an existing public utility owning or operating a “plant or equipment” for any of the stated purposes. This reflects the common, shared understanding of what a public utility is and does. is not merely a lucrative investment vehicle for a Wall Street asset manager, in this instance BlackRock, the world's largest; BlackRock manages over \$10 trillion in assets and provides investment, risk management, and advisory services to

institutional and retail clients. As defined by the Code, “public utility” does not contemplate some sort of non-operating outsider’s proposed, future, independently built, owned and operated, unregulated, free-market-pricing, remote appendage to an actual public utility. The plain language of the Code cannot be stretched that far, nor will wishing make it so. As the applicant admits, they merely *hope* to work with PGE—and are working to position themselves such that PGE will find a business venture with them attractive. The applicant is at most the putative fiancé or aspiring love interest of a public utility. As neither Blackberry Grove, LLC, nor site owners Bobosky are a public utility, this use cannot be sited in the AF-5 Zoning District no matter which review process is employed. The application must be denied.¹

Staff found that the language of CDC 430-105 is at best ambiguous. Just before initiating an exercise² to shoehorn the proposed BESS into the definition of Public Utility, staff states:

The proposed development is a battery energy storage system intended to work in conjunction with a utility provider (PGE substation in West Union) helping stabilize and provide electricity in times of need. As stated earlier in the background findings, the facility is not specifically listed as a permitted use in the AF-5 district or within this section of the Code since the concept of a BESS is fairly recent and zoning ordinances have not been updated to specifically address it as a new form of land use. * * *

Revised Staff Report, 10/30/25, at 16.

¹If PGE were to put its name on an application, the proposed site and use could be evaluated in light of PGE’s various master planning documents as required by CDC 430-105.4(a).

²We would term it a semantic exercise, but there is no basis for it in actual semantics.

In assisting its interpretation, staff relies in part upon Policy 9, Energy Resources, of the Washington County Comprehensive Plan's Rural/Natural Resource Plan. Rev. Staff Report at 3. However, Policy 9 does not serve that interpretation but, rather, its opposite. Policy 9 contains a single Implementing Strategy:

The County will:

a. Encourage the development and use of solar and wind power and other alternative energy sources at appropriate locations.

(Emphasis added.)

For all the reasons explained on this record and in the final section of this letter, below, the Bendemeer subdivision is not an appropriate location. The above Plan language ties closely into and helps guide the interpretation and application of the county's compatibility requirements for siting public utilities in the AF-5 zone. It is anything but an invitation to carry out willy-nilly siting, even of facilities which fall within the definition of Public Utility as this one does not.

B. Even if a BESS is allowed in the AF-5 zone, the proposed BESS does not comply with CDC 416 (Utility Design).

Section 401 of the CDC states, "In addition to all the other applicable standards of this Code the standards of this Article [IV (Development Standards)] are applied to *all* proposed development authorized by Article III, unless otherwise noted." (Emphasis added). According to the applicant, the proposed BESS is authorized within Article III by CDC 348-3.4 (authorizing certain public utilities under sections 430-105.3 through

430-105.7 in the AF-5 zone). Accordingly, under the applicant’s theory, the proposed BESS must be analyzed for compliance with all applicable Article IV standards.

Section 416 (Utility Design) is part of Article IV, but—strikingly—it is not even mentioned in the Staff Report. For a project being billed as a “public utility,” ignoring a code section titled “Utility Design” is a bit odd.

CDC 416-1.1 states:

All utility distribution facilities supplying electric, communication, or similar or associated service, installed in and for the purpose of supplying such service to any development shall be placed underground; provided however, that the word ‘facilities’ as used herein shall not include standards used for street lighting, traffic signals, pedestals for police and fire system communications and alarms, pad-mounted transformers, pedestals, pedestal-mounted terminal boxes and meter cabinets, concealed ducts, substations, or facilities used to carry voltage higher than 50,000 volts.

(Emphasis added).

Again assuming that CDC 348-3.4 applies to authorize the proposed BESS in the AF-5 zone (which is an incorrect assumption³), then section 416-1.1 applies to require

³As explained in our letter of October 30, 2025, for the Hearings Officer to conclude that the BESS is authorized in the AF-5 zone at all, the Hearings Officer would first have to find that the BESS is a “public utility service facility” under CDC 430-105.3, because that is the only type of public utility allowed in the AF-5 zone (though, as explained in our October 30 letter, the proposed BESS qualifies as a “public utility service yard” under CDC 430-105.2, which is a prohibited use in the AF-5 zone). A “public utility service facility” is defined to “include[] buildings, structures, and equipment within a fenced or otherwise enclosed area for the purpose of switching, regulating or controlling public utility services.” CDC 430-105.3. If the Hearing Officer so finds, then logic compels the additional conclusion that the BESS includes “utility distribution facilities supplying electric service” to the public under section 416-1.1.

most of the facilities at the proposed BESS to be located underground so long as they are not “substations” and do not “carry voltage higher than 50,000 volts.” Burying these facilities is not what the applicant proposes to do.

The applicant’s proposal does include a “collector substation” that presumably qualifies as a “substation” under CDC 416-1.1 and is therefore exempt from being located underground. *See* Project Description, Blackberry Grove Energy Storage Project, p. 10, Section 4.2. However, most of the facilities on the site are *not* proposed to be used as part of a “substation,” and neither will those facilities be used “to carry voltage higher than 50,000 volts,” the only other potential exemption from the “undergrounding” requirement of section 416-1.1. As the applicant’s Project Description says (at p. 10, Section 4.2):

The Project collector substation would be the termination point of the collection system of 34.5 kV AC electricity. The power to and from the BESS would be passed through a final interconnection step-up transformer to transform it from 34.5 kV to 115 kV.

(One kilovolt is equal to 1,000 volts). In other words, the proposed collector substation will employ a transformer so that the actual on-site voltage does not exceed 34,500 volts, well below the 50,000 volt trigger for exemption from the undergrounding requirement. This means that all “utility distribution facilities” on the site—effectively all of the proposed equipment except for the connector substation—must be buried. Obviously, the applicant proposes to put all of that equipment *above*-ground, which violates CDC 416-1.1.

It is worth noting that *buried* infrastructure compliant with section 416-1.1 would be more compatible with the AF-5 zone than what the applicant currently proposes.

**C. Regardless of the compatibility standard applicable here
(Type II or Type III), the applicant has not met its burden of proof.**

When the legislature stepped into the process of designating urban reserves in Washington County in House Bill 4078 (2014) in a controversial effort described as the “grand bargain,” it specifically designated the Bendemeer Urban Reserve Area. ORS 197A.250 (previously ORS 195.144) now states:

(b) The Legislative Assembly designates as acknowledged urban reserve the real property that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

(A) All of lots 1 through 18, inclusive;

(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of the right of way of Northwest West Union Road and the east boundary of the right of way of Northwest Cornelius Pass Road;

(C) The real property that is more particularly described as: Beginning at a point of origin that is the south bank of Holcomb Creek and the west boundary of the right of way of Northwest Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of Northwest West Union Road; thence westerly along the right of way to its intersection with the west boundary of the right of way of Northwest Cornelius Pass Road; thence northerly along the right of way to the point of origin;

(D) The real property that is more particularly described as tax lot 4050 in section 14A of township 1 north, range 2 west, Willamette Meridian;

(E) The portion of Northwest West Union Road and its right of way from the intersection of the road with the west boundary of Area 8C to the intersection of the road with the west boundary of the right of way of Northwest Bendemeer Road on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)"; and

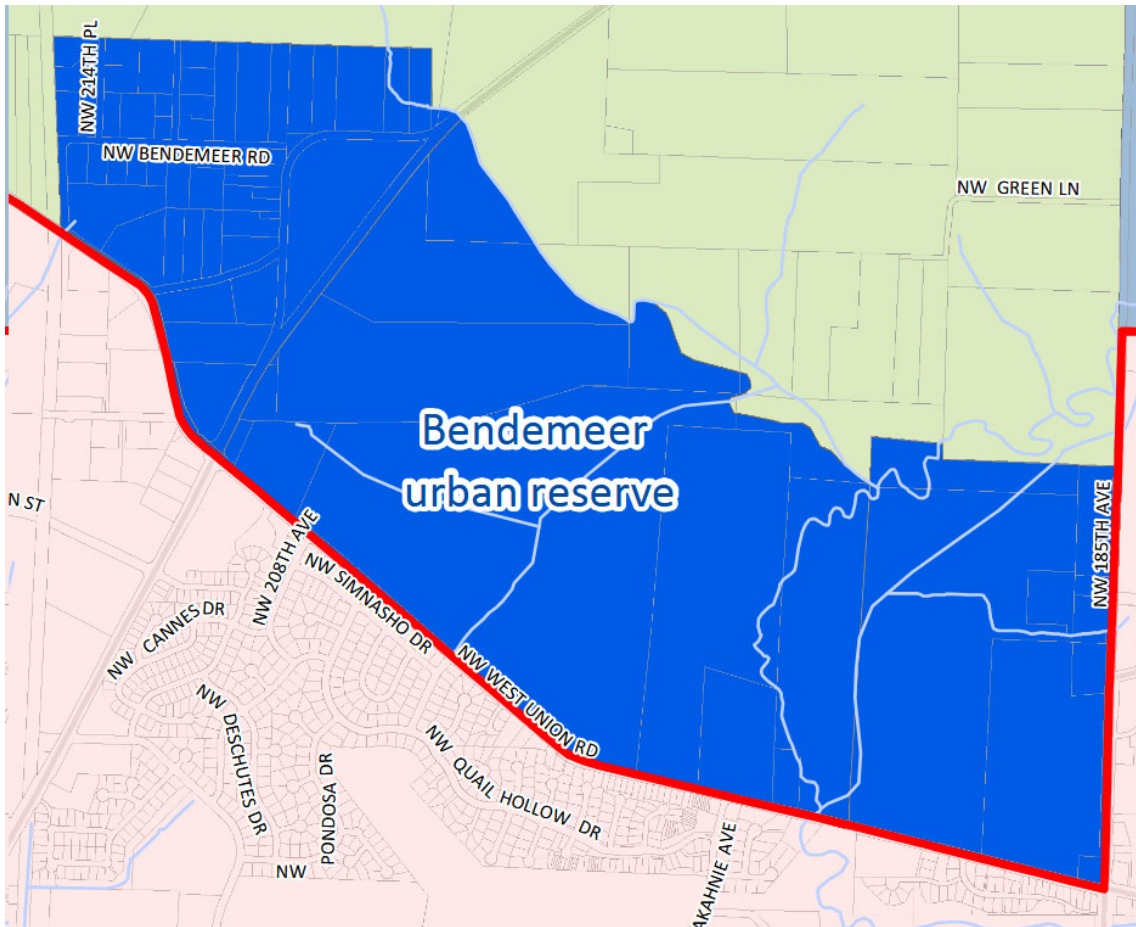
(F) The real property that is more particularly described as tax lot 400 in section 14D of township 1 north, range 2 west, Willamette Meridian.

In our initial letter of October 30, we pointed out that Metro's narrative for the Bendemeer Urban Reserve Area states in material part, at 7:

This urban reserve area contains two very different existing land development patterns. The western portion contains a number of rural residences on lots between two and four acres in size that provides some additional opportunity for residential development. * * *

For further clarification, this language appears at both pages 1 and 7 of Metro's narrative regarding the Bendemeer Urban Reserve Area, published as "Appendix 7d" to Metro's "2018 Urban Growth Report Appendix 7" on July 3, 2018.⁴ The "western portion" consists primarily of the Bendemeer subdivision shown on the left-hand side of the Urban Reserve Area on the map below:

⁴Pages 1 and 7 of Appendix 7d appear at pages 56 and 62 of the 532-page PDF comprising Metro's region-wide document.



Construction of a BESS on the largest remaining lots in the subdivision will be incompatible with redevelopment of those lots or adjoining ones for the desired increase in residential development. Rather, the BESS and its berms and barrier walls, not to mention its bulky 62-foot tall transmission towers and the attendant high-voltage lines, will be major, in-your-face impediments to such development. “Welcome to Bendemeer. Now go away.”

In point of fact, CDC 106-28 specifically defines “compatible”:

106-38 Compatible. Capable of existing together in harmony; capable of orderly, efficient integration and operation with other elements in a system considering building orientation, privacy, lot size, buffering, access, and circulation.

The “system” in his instance is an established large-lot subdivision, designated for densification, within an Urban Reserve Area directly bordering the existing UGB.

Sticking a BESS onto what may well be the most suitable property for residential redevelopment, in closest proximity to the UGB, would create anything but present or future harmony. It would be a destructive factor in terms of “efficient integration and operation with other elements” of the present and planned-for system. And to put it most simply, it would, as testified to, eliminate the upstairs bedroom privacy of several homes to the north and west. We appreciate that Blackberry Grove truly wants to build on this site. However, under the language of the CDC and other sources assisting in interpretation of that language, the BESS simply does not fit.

At the hearing before you, the applicant propounded an incredibly low bar for compliance with CDC 430-105.5:

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

(Emphasis added.)

As we have stated, the obligation to consider compatibility is not a license. We attempted to track with the applicant’s interpretation of the term. As we understand it, the

notion was that the applicant need only have designed for maximum compatibility but need to have actually achieved compatibility of any kind; the argued perspective was from the inside looking out rather than from the outside looking in.

This interpretation of the compatibility standard is neither reasonable nor correct because it (1) reduces the standard to a nullity, and (2) flies in the face of its context, including the county's comprehensive plan and other CDC provisions, and the characterization of the Bendemeer Urban Reserve. It has not resulted in a site plan that considers "especially, the compatibility of the facility with existing surrounding uses and uses allowed by the plan designation." Earthen berms, concrete walls, tall light towers, 6-7 story transmission towers, (at least) twice daily charge-up and charge-down industrial noises, and a high-fire-risk operation within a residential subdivision with no established evacuation plan for residents and no fire control plan other than to let the facility burn itself out in a massive cloud of its own toxic emissions, fails to meet the burden of fully or adequately considering the compatibility of the facility with existing surrounding uses.

The same is true of the applicant's argument that DEQ no longer enforces its adopted noise standards. Those standards are still on the books, and the applicant must still comply with them. Its failure to demonstrate such compliance is another failure of its burden of proof.

We reiterate that Policy 9, Energy Resources, of the Washington County Comprehensive Plan's Rural/Natural Resource Plan contains just one Implementing Strategy:

The County will:

a. Encourage the development and use of solar and wind power and other alternative energy sources at appropriate locations.

(Emphasis added.) This is not an invitation to just "fake it," as the applicant has done here.

Assuming for the sake of argument that Blackberry Grove is a public utility, it has failed to carry out the full and due consideration of compatibility required under CDC 430-105.5. Its application must be denied.

D. The amount of discretion which must be applied here necessitates the use of Type III approval standards, including as to compatibility.

Accordingly, the following compatibility standards must be applied:

348-4.2 Required Findings:

A. The requested use is compatible with the surrounding uses or may be made more compatible through conditions of approval.

B. The proposed use does not interfere seriously with "accepted farming practices" as defined in ORS 215.203(2)(c) or forestry uses on adjacent lands devoted to farm or forest use. * * *

The applicant has not come close to demonstrating compliance with these criteria.

Land Use Hearings Officer
Washington County
November 13, 2025
page 13

E. Conclusion.

For each of the reasons set out above and those submitted into the record, this application must be denied.

Very truly yours,

Jeffrey L. Kleinman

Jeffrey L. Kleinman

Jesse A. Buss

Willamette Law Group PC

Attorneys for No Batteries in Backyards

cc: client