

BEFORE THE BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

In the Matter of the Appeal of Special Use Permit
Application by Convergent Energy-Battery Energy
Storage System to construct a 5.4-megawatt
lithium-ion battery energy storage system (BESS) at
7505 183rd Avenue SW, Rochester, Washington.

Sequence No.
Project No. 2024104116

DECISION

of the March 9, 2026
Hearing Examiner Findings, Conclusions, and
Decision on Reconsideration

THIS MATTER came before the Board of County Commissioners (“Board”)¹ on March 19, 2026, due to Brian Haight and Tamara Haight (“Appellants”) filing an appeal seeking full reversal of the Hearing Examiner’s decision on reconsideration, dated March 9, 2026. The Hearing Examiner approved a special use permit in favor of applicant, Convergent Energy and Power (“Applicant”). The Hearing Examiner’s decision approved the Special Use Permit with twenty-five enumerated conditions. The Community Planning and Economic Development department also issued a Mitigated Determination of Non-Significance (“MDNS”) on August 14, 2025, pursuant to the State Environmental Procedures Act, Chapter 43.21c RCW.

On March 19, 2026, Appellants filed an appeal of the Hearing Examiner’s decision on reconsideration. No appeal was filed regarding the associated MDNS. On May 20, 2026, the Board held a public meeting to consider this appeal.

APPEAL BEFORE THE BOARD

The Hearing Examiner Chapter of the Thurston County Code outlines the Board’s duties on appeal:

At the closed record appeal meeting the board may adopt, amend and adopt, reject, reverse, and amend conclusions of law and the decision of the examiner, or remand the matter for further consideration. If the board renders a decision different from the decision of the examiner, the board shall adopt amended conclusions accordingly.

Thurston County Code 2.06.080(D).

¹ All five commissioners were present at the hearing.

1 Here, the Appellants allege and identify a primary issue as follows:

2
3 Primarily, there is a misapplication of the Comprehensive Plan requirements that
4 uses sited in this zoning serve the everyday needs of rural residents and this specific
5 community. There is also a failure to meet the requirements of Thurston County
6 Code for energy infrastructure of this type, namely, a full accounting of site
7 alternatives and showing of need to site at this particular location.²

8 Appellants also raised four additional specific issues as follows:

- 9 A. Fire safety and toxic emissions risk,
10 B. Wildfire risk,
11 C. Groundwater contamination risk, and
12 D. Noise and visual impacts.³

13 **DECISION ON APPEAL**

14 The Board **affirms** the Hearing Examiner's decision to approve special use **with**
15 **additional procedural conditions** as specified below.

16 Having considered the record and arguments before the Board, the Board adopts and
17 affirms the Hearing Examiner's conclusions of law and decision on reconsideration. The Board
18 finds that the Hearing Examiner made findings and conclusions based on the record before her
19 and applied applicable law and therefore did not err in rendering any decision material to the
20 issues raised by Appellants.

21 Nonetheless, the Board finds that considerable concern in the record over the completion
22 of fire preparedness plans warrants additional procedural safeguards. The Hearing Examiner
23 acknowledged that "the concern regarding fire is not speculative." *Finding No. 32*. The West
Thurston Regional Fire Authority raises significant questions and criticisms with the forthcoming
review of plans, *Findings Nos. 33 & 39*, and concerns and questions are raised by numerous
neighboring property owners, including Appellants, *Finding No. 32*. Like the Hearing Examiner,
the Board is in no position to evaluate mitigation and emergency fire plans, nor is there anything
in the record that substantiates the idea that issuance of a fire safety permit is impossible. In any
event, the prospect of either the Hazard Mitigation Analysis or Fire Safety/Emergency Response
Plan failing review warrants earlier evaluation.⁴

² Notice of Appeal, Appellant Narrative, at pp. 2.

³ *Id.* at 2-4.

⁴ Recent improvements in BESS regulation, including adoption of NFPA 855, have resulted in less fire
incidents nationwide. *Findings 52 & 53*. Nonetheless, the Board is convinced that the implementation of new
regulations at an earlier stage of development can only help minimize or avoid harm and risk from fire.

1 If the County waited to review emergency plans once the facility is “energized” or receives
2 final inspection, as currently conditioned, the project would be built before facing the prospect of
3 having to decommission the facility in the event it fails review. Not only would the public be
4 subjected to the impacts of an already built facility, the County and its taxpayers would be
5 burdened with enforcing a violation after the fact. Moreover, a proactive approach is necessary to
6 ensure the public that the project design is informed by hazard mitigation and emergency plans,
7 rather than the other way around.⁵ Such plans are essential to addressing potential health and
8 safety effects, impacting groundwater and air quality, in addition to obvious risk to life and
9 property.

10 In all other respects, the Hearing Examiner’s decision properly applies the County code
11 to the facts in the application and record. The Hearing Examiner’s approval and now the Board’s
12 affirmance relies substantially upon the continued compliance with NFPA 855, IFC Chapter 12,
13 UL 9540A, and the conditions of approval that are all enforceable. Additional permitting
14 associated with this project is not merely ministerial and requires substantive review. Indeed, even
15 the Applicant concedes “[i]f the Fire Marshal is not satisfied that the plans meet all applicable
16 safety standards, the project will not be built.” *Response Brief p. 3*. Nonetheless, the mere
17 possibility of denial at a later stage does not give rise to a denial of special use under the County’s
18 current code.

19 The Board’s role in this matter is a closed-record quasi-judicial appellate role requiring
20 application of the existing Thurston County Code, Comprehensive Plan provisions, and
21 evidentiary record developed before the Hearing Examiner. The Board’s decision in this matter
22 is limited to the legal and evidentiary standards applicable to this appeal and should not be
23 interpreted as a broader legislative determination regarding future Battery Energy Storage System
policy within Thurston County.⁶

24 **IT IS HEREBY ORDERED AS FOLLOWS:**

25 The Hearing Examiner’s Decision is adopted and affirmed in its entirety with the addition
26 of amendments to the Hearing Examiner conditions as follows:

27 *Condition 11, p. 32 of 42.*

28 Prior to construction and issuance of any grading or building permits ~~energizing the BESS~~
29 ~~facility~~, the Applicant shall submit and secure approval of a Hazard Mitigation Analysis
30 and Fire Safety/Emergency Response Plan. The approved Analysis and Plan shall be
31 provided ~~provide the approved Hazard Mitigation Analysis and Fire Safety/Emergency~~

32 ⁵ County fire code official could require additional mitigation or operational safeguards during plan review
33 and approval. The “[F]ire Code Official may coordinate with the fire district and incorporate conditions
34 addressing the fire districts needs into the fire permit conditions. *Finding No. 64*.

35 ⁶ The Board notes that, separate and apart from this quasi-judicial proceeding, the Board previously directed
36 that potential Battery Energy Storage System code updates be added to the County’s legislative planning
37 docket for evaluation of whether additional regulations may be warranted to address evolving standards and
38 safety considerations, including fire protection requirements, setbacks, and related land use considerations
39 associated with future Battery Energy Storage System proposals.

1 ~~Response Plan~~ to the serving Fire District/Regional Fire Authority. The Applicant shall
2 coordinate with the District to conduct at least one pre-incident planning walk-through
3 and training session for responding personnel, including explanation of system layout,
shut-down procedures, access routes, and water supply. Documentation of this
coordination shall be provided to the Fire Code Official.

4 *Condition 25, p. 34 of 42.*

Prior to construction, the Applicant shall:

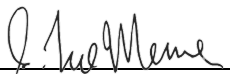
- 5 a. Pay outstanding construction review and inspection fees,*
6 b. Receive erosion and sediment control permit,
c. Have the erosion and sediment control inspected and accepted,
7 d. Receive a construction permit, ~~and~~
e. Schedule a pre-construction conference with County staff, and
8 f. Secure the approval of a Hazard Mitigation Analysis and Fire Safety/Emergency
Response Plan.

9
10 DATED: May 27, 2026

11
12 BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

13 ATTEST:

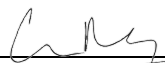
14 
Clerk of the Board

15 
TYE MENSER, Chair

16 
WAYNE FOURNIER, Vice Chair

17 APPROVED AS TO FORM:

18 JON TUNHEIM
PROSECUTING ATTORNEY

19 
CAROLINA MEJIA, Commissioner

20 By: 
Deputy Prosecuting Attorney

21 Opposed
RACHEL GRANT, Commissioner

22 Abstained
EMILY CLOUSE, Commissioner