



# ENERGY FACILITY SITING COUNCIL

## Energy Facility Siting Council Meeting Minutes October 28, 2022

- A. Consent Calendar (Action Item & Information Item)<sup>1</sup>
- B. Protected Areas, Scenic Resources and Recreation Standards Rulemaking, Council Review of Public Comments and Consideration of Permanent Rules (Action Item)
- C. Public Comment Period (Information Item)<sup>2</sup>
- D. The Climate Trust Financial Audit for 2021 and Annual Update (Information Item)
- E. Recycling of Wind Turbine Components (Information Item)
- F. 2022 Site Certificate Amendment Rulemaking, Council Initiation (Action Item)

The meeting materials presented to Council are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

**Call to Order:** The meeting was called to order on Friday October 28, 2022, at 8:30 AM by Chair Grail.

**Roll Call:** Chair Marcy Grail, Vice-Chair Kent Howe, Council Members Hanley Jenkins, Cynthia Condon, were present in person.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett; Operations and Policy Analyst, Wally Adams; Senior Siting Analyst and Rules Coordinator Christopher Clark; Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC and Administrative Specialist Nancy Hatch. Senior Policy Advisor, Sarah Esterson was present virtually.

**A. Consent Calendar (Action Item & Information Item)** – Approval of the August 29-30-31, 2022 and September 27, 2022 minutes; Council Secretary Report; and other routine Council business.

### **Consideration of the August 29-31, 2022, Meeting Minutes**

Council Member Jenkins motioned that the Council adopt the August 29-31, 2022, meeting minutes

Vice Chair Howe seconded the motion.

Motion carried unanimously

<sup>1</sup> Audio/Video for Agenda Item A=00:04:02 – 2022-09-27-EFSC-Meeting-Audio

<sup>2</sup> Audio/Video for Agenda Item C=02:53:58– 2022-09-27-EFSC-Meeting-Audio

## **Consideration of the September 28,2022, Meeting Minutes**

Council Member Jenkins motioned that the Council adopt the September 28, 2022, meeting minutes.

Vice Chair Howe seconded the motion.

Motion carried unanimously.

*Vice Chair Howe asked for confirmation allowing 3 Council Members approval of minutes qualifies as a quorum for approval.*

*Secretary Cornett confirmed there is a table in the Attorney Generals Model Rules for Public Meetings establishing the quorum based upon the number of people present in a public meeting, outside of an application for a certificate. A Council body of 7 with a quorum of 4 present, 3 affirmative votes qualifies if it is not for a site certificate.*

**Council Secretary Report** – Secretary Cornett offered the following comments during his report to the Council.

### **Council Updates**

- **Staff Updates**

Tom Jackman joined staff as the new Siting Operations and Policy Analyst 3, the rulemaking coordinator for the division. The November EFSC meeting will include an agenda item for his proposed appointment as the official EFSC rulemaking coordinator. As the department is transitioning, Christopher Clark will finish the projects in rulemaking he had been working on prior to Tom Jackman joining the staff.

- **Project Updates**

**Shepherds Flat North, South, and Central-** During the September EFSC meeting, Council was provided a compliance update that those facilities had recently been repowered and identified some setback issues with 2 of the turbines on Shepherds Flat North and 1 on Shepherds Flat Central. Since the meeting, the blades have been replaced with shorter blades and the compliance issue has been resolved.

*Council Member Jenkins commented during his travel to EFSC meeting, he observed the substantially longer blades on the turbines (15 feet longer).*

*Council Member Condon confirmed her understanding of how the turbines occupied the setback areas with the rotation of the longer blades.*

### **Stateline Wind Project**

On October 11,2022 the department received an amendment determination request proposing the wind facility components within Vansycle Unit be reassigned from the current site certificate

holder, which is FPL Energy Stateline 2 Inc, to Vansycle Wind 2 LLC without an amendment because Next Era Energy Resources, the parent company, will continue to retain control of both units. Administrative Rule 345.027.0400 requires that a site certificate transfer if there has been a change in ownership, possession or control of the facility or the certificate holder. According to the certificate holder and the parent company, there will be no such change because while the assets will be assigned to a new LLC and the new LLC will become the certificate holder, the parent company will retain ownership, possession, and control of the project. Based on the information provided and written verification, on October 27<sup>th</sup> the department agreed with the certificate holder and determined an amendment was not required. The determination was sent out by a courtesy email via Click Dimensions and was forwarded to the Council. Per OAR 145.027.0357 Sub 6, at the request of any of the members of EFSC, the department's determination must be referred to the Council for concurrence, modification, or rejection. Staff can add to the November meeting agenda if any Council member would like to have the full Council review the determination.

*Council Member Condon expressed her view that the parent company and the LLC are 2 different entities. She would like the department to review further with respect to EFSC considering the parent company as the responsible party versus the LLC. She believes the department should have a comfort letter for the LLC not the parent company.*

*Counsel to the Council, Patrick Rowe stated the security instrument is going to be updated but will name the new LLC when the assets have been assigned.*

*Secretary Cornett inquired whether Council Member Condon would like to have Council evaluate at the November or December EFSC meeting or would she like more information.*

*Council Member Condon requested more information at this time.*

*After further discussion, the department will examine and respond to Council Member Condon's questions. After staff responds, Council can determine if the determination should be added to the November or December meeting agenda.*

### **Nolin Hills Wind Project**

At the July EFSC meeting, Council issued the proposed order on ASC for the Nolin Hills Wind Project. During the timeframe to request to participate in a contested case, the Council appointed hearing officer received a request from Umatilla County, who do not agree with the conclusion in the proposed order relating to Umatilla County's 2 mile set back requirement between the wind turbines and residences. The Department's review and determination was that the 2-mile setback was not applicable substantive criteria as it was not required by the land use goals as asserted by the applicant in the DPO. During the DPO hearing, Council agreed with the conclusion on the record. On October 14, 2022, Hearing Officer Kate Triana provided a status update email to Council stating she anticipates providing written statements to Council on the 15<sup>th</sup> of each for the course of the Contested Case proceeding or on an as needed basis. On September 12, she issued a notice of petitions to request the party status, the order scheduling, the primary conference, and reoccurring conference agenda. On October 5, 2022, the petitioner Umatilla County, the applicant and ODOE (all through legal counsel) participated in a telephone prehearing conference regarding the petition of

party status. Hearing Officer Triana will be issuing an order on the petition for party status and the contested case issues as soon as practicable.

*Counsel to the Council Patrick Rowe added the next step is the issuing of the order, stating that these are the parties, and these are the issues. Next is a pre-hearing conference to discuss how the contested case will proceed, which will then result in a case management board.*

*Secretary Cornett concluded Hearing Officer Triana will keep the Council up to date on the status of the investigation.*

*Council Member Jenkins questioned if Hearing Officer Triana's decision will be presented to Council for their approval.*

*Secretary Cornett responded depending upon her determination, it is possible that Umatilla County could bring the contested case issue to the Council.*

*Counsel to the Council Patrick Rowe noted that there are 2 issues raised by Umatilla County. The other issue raised stated that the Council should require the applicant to get a conditional use permit. In the proposed order, the department included the requirement that required the applicant to get a PUC from the county. During the prehearing conference, the attorney for Umatilla County stated their interpretation of the requirement would include the setback requirements. However the Hearing Officer resolves the first issue should take care of the second issue.*

*Council Member Jenkins noted his familiarity with Umatilla County's concern but noted that the statute is clear.*

- **Biennial Energy Report**

The ODOE Biennial Energy Report will be issued on November 1<sup>st</sup>. The report is developed every even number year in advance of the long legislative session to inform local state, regional and federal energy policies, developments, energy planning and energy investments. As soon as it is available, Council Members will be provided a link and/or a hard copy of the report.

*Chair Grail added ODOE has done a great job of reaching out to people as it appears that more people are engaged in the legislative process now. She has found the biennial report to be very valuable and useful. With the continuous turnover of the legislature, the report is an important resource as clean energy bills continue to be added.*

- **Future EFSC meeting dates**

**November 17-18, 2022-** Meeting to be held in Hermiston, OR at the Oxford Inn Suites. Thursday night begins at 5:15 PM and will be a DPO public hearing for West End Solar project. The monthly EFSC meeting will be held on Friday beginning at 8:30 AM.

**December 15-16, 2022-** Currently planned for a one-day meeting at the ODOE offices.

**B. Protected Areas, Scenic Resources and Recreation Standards Rulemaking, Council Review of Public Comments and Consideration of Permanent Rules (Action Item)** – Christopher Clark, Senior Siting Analyst & Rules Coordinator. The Council continued its review public comments received on proposed amendments of the Protected Areas, Scenic Resources and Recreation Standards and associated information requirements and considered the adoption of permanent rules.

*Council Member Jenkins inquired about the 2 commenters who did not raise their objections in the manner required by the statutes.*

*Mr. Clark stated that statute requires an objection to a fiscal impact statement must be provided within 14 days after issuance of the proposed rulemaking. It requires the notice to be provided in writing, to be specific about the basis for the objection, and it must be sent to the address where comments are normally received. The day before the notice was issued, Mr. Clark received a question from a stakeholder asking why staff believed no small business would be affected. The correspondence that took place regarding the question was not understood to be a formal objection as it was sent before the notice was issued and was sent to Mr. Clark, not the rules coordinator. The other comment received was received after the 14-day period for objections had expired. The objections also need to be filed by either 15 or more persons or an association representing 50 or more person. The first informal question mentioned was from an association with more than 50 members, but the 2<sup>nd</sup> was from a single entity with less than 15 employees. The Council can decide that it is not necessary to respond to the comments, though staff would recommend consideration of the raised concerns which could reduce the possibility of a procedural challenge.*

*Council Member Jenkins asked Counsel to the Council, Patrick Rowe, what would the process be if the Council were to deny the Department's request for fiscal evaluation and 1 of the 2 commenters appealed the decision?*

*Mr. Rowe responded any rulemaking done by the department is automatically appealable to the Oregon Supreme Court. Their challenge would be that the Department did not meet the requirements for the fiscal impact statement. The response could be the commenters were too late. There are other comments that were made, which is a reason to revisit the rule package. If Council is revisiting the rule package to address other issues, Council could also consider revisiting the fiscal impact evaluation.*

*Chair Grail expressed her concern regarding setting an expectation (deadline) and not following thru with the expectation. Council can recognize the raised issue but allowing late comments can create another set of issues.*

*Council Member Jenkins commented the definition of small business is clear. The first issue was resolved when the Department made the decision that the rulemaking does not affect small business. The second issue was they did not meet the statutory requirement for raising the issue. He expressed his frustration and noted it seems to be a delay tactic rather than addressing a real issue.*

*Secretary Cornett responded whether it is a delay tactic, this is also an opportunity to perfect the model for rulemaking. If these arguments get raised again in the future, this is a good model for how to address the arguments and clean up the rulemaking to make it more refined. It can provide some value moving forward.*

*Council Member Condon commented it has been a long time since the last review. If the comments are allowed, how much time does it add to the rulemaking process?*

*Mr. Clark answered the department would need to have a committee meeting to discuss, then time to revise and issue the amended notice. There is a 20-day required comment period for fiscal impact amended notice. It could be presented at the December EFSC meeting for final decision.*

*Council Member Condon noted her opinion that is worth the time as it is an important "piece of the puzzle".*

*Council Member Jenkins questioned does refining the process for the fiscal impact analysis mean appointing a committee in every case?*

*Mr. Clark provided a procedural explanation for the fiscal impact analysis. In this particular case, as it was during the pandemic, instead of an advisory committee there were workshops for whomever wanted to participate.*

*Counsel to the Council Patrick Rowe added his understanding during the process, this issue has not been fully vetted. The position that the commenter is taking is that there will be impact on small businesses. The Department is saying that it will not. This will give commenters an opportunity to explain their conclusions.*

*Mr. Clark noted that Council did receive a comment for the objections regarding why they thought small businesses would be affected, though not an explanation of how they would be affected and no potential remedy for the impacts. A fiscal impact advisory committee meeting may be able to provide that information and opportunity.*

*Secretary Cornett, referring to the goal post exceptions comments, noted this is a general model for this rulemaking should Council want to do a goal post exception in the future.*

*Council member Jenkins stated coming from a land use planning background he strongly believes in a complete application being the demarcation for the application and is fair to every applicant. He expressed his support for the goal post designation for complete applications.*

*Secretary Cornett reminded Council that this will come back to future meeting for final decision.*

*Mr. Clark added if Council agrees with staff recommendations to go with the notice, Council will have another opportunity to revise the proposals before they become permanent. There will be another comment period which will be open to this issue.*

*After a brief discussion, Secretary Cornett and Mr. Clark advised Council they must decide regarding option 1 or 2 as presented.*

*Further discussion occurred. Mr. Clark summarized the first presented option (Option 1) as the same standards will apply to Council decisions regarding Protected Areas, Scenic Resources and Recreation Standards Rulemaking but if there were a local ordinance, state law or other rules applicable, Council decision would not waive those obligations.*

*Vice Chair Howe offered an example his understanding. A site certificate is issued by the Council, the certificate holder is required to work with local agencies and state departments for compliance of their rules.*

*Counsel to the Council Patrick Rowe stated this option is requiring certificate holders to comply and does not waive any obligation of local and state requirements. This rule applies to applications that have been submitted but not yet approved.*

*Vice Chair Howe noted his understanding of the goal post language for after application is approved requires certificate holder to comply with state agencies and local subsidiaries rules and regulations.*

*Secretary Cornett confirmed, adding certificate holders must also meet rules and regulations at the federal level. While EFSC is not implementing other agencies requirements as they are not part of our requirements, EFSC does not have authority to waive those requirements.*

*Mr. Clark added if a new rule is added and EFSC did not address it, there is no protection for the certificate holder. The certificate holder would have to comply with whatever agency had new rule.*

*Secretary Cornett noted handling new requirement criteria can become very complicated at the contested case or in the final order stage of site certificates.*

*Chair Grail commented regarding environmental justice considerations being addressed and evaluated in the review process, Council needs to wait for 2023 legislative direction as there is a lot of concepts being discussed currently.*

*Council Member Condon agreed with Chair Grail, adding Council needs to have all the pieces to consider the issue.*

*Secretary Cornett offered, in response to public comment recommending more transparency and accountability in the analysis area, during the notice of intent stage there are predefined study areas. The areas are preestablished based on justification of when the rules were established. The analysis areas can increase or decrease. The idea is to have more specific information throughout the process based upon the study areas, the public comments, and different reviewing agencies to help determine the analysis area for a particular facility.*

*Council Member Jenkins agreed with Staff recommendation opposing eliminating the analysis area, noting the analyst area provides direction to the applicant with very specific application requests.*

*Council Member Condon asked, in reference to protected areas item q (the agricultural experiment station) and item r (the research forests), are only the Oregon State University establishments considered protected areas?*

*Mr. Clark confirmed only the Oregon State University establishments considered protected areas as the university has specific statutory authorization to create these agricultural experimental stations though there are other universities that have research reports. The Elliot State Research Forest was recently converted to a research forest from a state forest that was managed for multiple purposes. There originally was a proposal that this would become another research forest for Oregon State University. The forest has remained in state ownership and is now managed by an independent agency. OSU is still contracted to do the research and develop the management and research plans. Mr. Clark has reached out to OSU for update on whether it would be appropriate for Elliot State Research Forest to be included as a protected area.*

*Council Member Jenkins asked for clarification of “designated” used in OAR 345.001.0010 subsection i, “federal land designated as”.*

*Mr. Clark noted the rule currently states “BLM Land designated as”. The public comments received felt it would clarify the understanding of the rule to use “federal designated lands”. There are only 2 ways for lands to become federally designated. It is either designated through the administrative planning process and incorporated into a management plan or designated by Congress.*

*Council Member Jenkins expressed his concern that the language is unclear about what is currently designated.*

*Mr. Clark suggested a change of language in subsection i to say “land designated in a federal land management plan or by an act of Congress”.*

*Council Member Condon asked if the language covers all of the ways for federal designation of lands.*

*Mr. Clark stated he was unsure if there was an additional mechanism for federal designation of land. The public comment provided mentioned the planning process or the act of Congress which establishes national level resources.*

*Council Member Jenkins expressed his concern that the federal land management plans should go through a public process so the public has the opportunity to participate.*

*After further discussion, Council decided option 2 as presented was the preferred language.*

*Regarding public comment recommending including all areas designed by BLM or U.S. Forest Service as Lands with Wilderness Characteristics as protected areas, Council Members agreed with staff recommendation to not include these areas as they are not formally designated for protection through any congressional or administrative action.*



*Regarding the public comment recommending adding inter, bi state, and regional to the list of land management plans that must be reviewed, Council concluded adding the language “ regional” could help to define significant local resources.*

*Mr. Clark stated Staff recommendation for Council to authorize staff to convene a Fiscal Impact Advisory Committee (FIAC), inviting all persons who commented on the June 1 Notice of proposed rulemaking to participate. One commentor, from New Sun Energy, expressed concern that there should be small business, local governments, energy developers and environmental considerations included in such a committee. Council could invite other stakeholders and agencies to participate.*

*Council Member Jenkins questioned the lack of industries in the list for participants of a FIAC.*

*Mr. Clark noted there are 3 industry participants: New Sun Energy, Oregon Solar + Storage Industries Association and Renewable Northwest.*

*Chair Grail suggested including members of the Chamber of Commerce would provide additional input from small businesses.*

*Council Member Jenkins expressed his concern for balance on the committee. Most of the commentors are going to advocate for small businesses. Small businesses are not applying for site certificates.*

*Mr. Clark suggested inviting large site applicants and parent companies to join the committee.*

*Chair Grail noted it is strange that site applicants did not participate in the comment period but added her concern is for the ranchers, farmers, and other members of the public.*

*Council Member Condon asked what the parent companies would add to the committee meetings?*

*Mr. Clark clarified that the fiscal impact statement has 2 components. 1 is a general statement which includes an estimate of how staff think the rules will affect certificate holders and applicants. The second is specific to small businesses, which states if there is a small business affected, the events would be the same.*

*Council Member Condon stated that if large businesses are receiving invitation, it would be ideal if that invitation were passed along to individuals who work for the company.*

*Chair Grail reminded that Council is discussing a committee for scenic resources and recreation standard rulemaking.*

*Mr. Clark added an additional consideration is there would need to be a public notice as the committee would be a public meeting. Council has the discretionary choice of allowing member of the public to attend. The meeting could include a public comment period to provide an opportunity for comments/ suggestions from those who weren't a designated member of the committee.*

*Council Member Condon asked how many members for the advisory committee?*

*Mr. Clark stated there is no exact number but typically 12 people. First Staff would solicit interest for the committee. Staff would then present the pool of interested parties to Council for their recommendations of a representative group from the pool.*

*Secretary Cornett clarified Staff would solicit from the group of people who provided comments. Anyone who responded and would like to participate, we would allow them to participate, whether it is 5 or 30.*

*Council Members Jenkins and Condon expressed their concern for a balance of viewpoints in the committee.*

Vice Chair Howe motioned the Council approve the staff's request for authorization to convene a fiscal advisory committee made up of persons who commented on the notice of proposed rulemaking and authorize staff to issue an amended notice of proposed rulemaking with recommended changes added today including federal I, option 1, and Scribner errors.

Council Member Jenkins seconded the motion.

After discussion, Vice Chair amended his motion to include "a fiscal advisory committee made up of persons who commented on the notice of proposed rulemaking and invited members of local government associations to participate as they choose".

Council Member Jenkins seconded the motion.

The motion was carried unanimously.

- C. Public Comment Period (Information Item)** – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment. Items closed for comment include the Boardman to Hemingway Transmission Line Proposed Order and Proposed Contested Case Order, the Nolin Hills Proposed Order, the Protected Areas, Scenic Resources, and Recreation Resources Standards Rulemaking and the Perennial Windchaser Station proposed final retirement plan.

**Mike McArthur**-Executive director of the Community Renewable Energy Association provided the following comment.

Community Renewable Energy Association (CREA) is an intergovernmental association consisting of members of local government such as cities and county supports and irrigation districts, official members who are non-governmental organizations, and private businesses who are developers of renewable energy. Mr. McArthur thanked the Council for including local government in the Fiscal Impact Advisory Committee. He encouraged Council to include either CREA or the Association of Counties on the advisory committee as they believe there are fiscal impacts on local governments. He also noted CREA support for the New Sun comments provided to staff.

**The public comment period was closed at 11:17 am.**

- D. The Climate Trust Financial Audit for 2021 and Annual Update (Information Item)** – Todd Cornett, ODOE Assistant Director for Siting/Council Secretary provided an overview of the 2020 Financial Audit and Kyler Sherry, The Climate Trust Program Manager provided an annual update of The Climate Trust.

*Council Member Condon questioned the Performance by Facility, Avangrid project 2 and the 60% requirement of cash obligated. On the viewed slide, this facility is relatively old but is showing less than half of offset purchase funds being obligated.*

*Ms. Sherry clarified with this facility; Climate Trust entered into an agreement to purchase credits from a project for 10 years. That project switched to a low carbon fuel standard. The cash that was obligated to go towards offsets then became unobligated. As the Trust is allocating funds for Oregon, they treat all the facilities as one big program. If a facility falls below the 60% threshold, money is spent from that facility first.*

- E. Recycling of Wind Turbine Components (Information Item)** – Daniel Perry, Wind Asset Manager, Brookfield Renewable provided an overview of the recycling efforts associated with the repowering of the Shepherds Flat North, Shepherds Flat South, and Shepherds Flat Central wind projects.

*Secretary Cornett asked how are the blades cut into pieces?*

*Mr. Perry answered they are cut in the middle. The blades are comprised of wood and fiberglass. The challenge was to not allow fiberglass to go everywhere. A tree cutting service was brought out which had excavators with large diamond blades and water recycling pumps on the blades. They set tarps and a collection system under the entire blade and were able dispose of all of the fiberglass. The blades are too long to be shipped so they need to be manageable as they leave the site for permitting as well as for safety.*

*Secretary Cornett added it is a complex endeavor to get the long blades to the site. It makes sense to cut them down to smaller size for removing.*

*Vice Chair Howe commented this is the first time for this type of project and Brookfield Renewable was inventing the process as they moved through it.*

*Counsel to the Council Patrick Rowe inquired if there are any concerns that in the next several years, as more repowering occurs and more recycling of blades, this one (only) facility will no longer be able to accommodate the demand?*

*Mr. Perry stated the recycling facility is looking to expand. He also noted that now that the recycling of blades concept has been proven, other companies will get into the recycling program as well.*

*Council Member Jenkins asked what percentage of the blade is wood? His concern is wood in the concrete.*

*Mr. Perry was unsure of the exact percentage is but some of the wood is processed and is the heat source for the cement as opposed to using fossil fuel sources for the cement.*

*Council Member Condon asked if there is a resale market for blades shorter blades are being replaced by longer blades on some sites.*

*Mr. Perry confirmed that there is a market for secondary sale of blades and older components.*

*Council Member Condon asked if there is a difference in the longevity of older blades versus the new blades?*

*Mr. Perry stated that the life expectancy for the new blades is 30 years, the older blades had a 20-year life span.*

*Vice Chair Howe asked if there was any scrap value to the recycled blade materials?*

*Mr. Perry answered the goal was to properly dispose the blade and recycle everything. He is not aware of any scrap value.*

*Council Member Condon asked what lessons did you learn in this project that going forward other certificate holders can utilize?*

*Mr. Perry stated understanding the site conditions, the contractor will follow the rules and be able to coordinate and find the facilities that can accommodate a lot of the metals. Having an infrastructure in place to allow for the offload to reputable recycling facilities is also necessary.*

*Council Member Jenkins suggested EFSC be broad enough in their requirements to allow the applicants to explore opportunities for recycling and rebuilding.*

- F. 2022 Site Certificate Amendment Rulemaking, Council Initiation (Action Item)** – Christopher Clark, Siting Policy Analyst & Rules Coordinator. Staff recommended that Council initiate informal proceedings to evaluate potential rule changes to the rules governing the amendment of site certificates in OAR chapter 345, division 027. Staff also requested Council’s authorization to solicit public comment to assist in the completion of the review required under ORS 183.405 for rules adopted in 2020, and to solicit applications to serve on a Rulemaking Advisory Committee for the rulemaking.

*Council Member Jenkins inquired why did the courts reject all the 2017 permanent rules amending the procedures for amended site certificates not the sections in question?*

*Mr. Clark answered the first decision making was invalidated because there was a procedural error related to the Council not responding to request for statements of objectives in writing. In 2021 the court limited their decision to invalidating just the sections of the rule that were there. It did not invalidate the order adopting the other sections.*

*Counsel to the Council Patrick Rowe added when there is a procedural error, it's considered to impact the entire set of rules.*

*Chair Grail commented that 5 years is long time for a review committee, referring to staff recommendation that a notice be given to the advisory committee appointed for the 2017 rulemaking (for continued review). Many people may not be in the same place as 5 years ago.*

*Council Member Jenkins noted that it may be different people as the notification list for rules has changed.*

*Mr. Clark clarified there is an administrative procedure act that requires us to send the report to all of the members of the advisory committee that was appointed to review the draft rules.*

*Chair Grail expressed her concern for the timing in the next steps in the process for the rulemaking as the holidays are approaching.*

*Secretary Cornett noted that Council is not expected to come to their conclusion at this time. Staff is asking the advisory committee are the rules working or not? This will help staff create a new scope of the rulemaking in 2023.*

*Council Member Condon asked when the notice to the committee is sent, are members reminded of the intended effects of questions from 2017 or responding with approval or no approval?*

*Mr. Clark stated the information is on the record. People can go back and review. In the notice itself, it is the general questions.*

*Secretary Cornett added the information should be made available on the website, with the documentation associated with the amendment rulemaking.*

*Mr. Clark displayed the draft notice to Council. He noted staff asked more specific questions to incorporate the statements of objectives and needs. Staff can add additional information regarding location of additional resources related to the orders.*

Council Member Jenkins motioned the Council to initiate rulemaking with the proposed revisions to the rules governing the expiration amendment and termination of site certificate number OAR 345.027 and authorized staff to issue a notice seeking public comment to assist in a 5-year review of rules adopted under the administrative order EFSC1-2020.

Council Member Condon seconded the motion.

The motion carried unanimously.

**The meeting was adjourned at 12:45 pm.**