



This document is intended to be a guide for applicants before, during and after Energy Facility Siting Council (EFSC) approval of an application for a site certificates for an energy facility. The guide provides links to up-to-date information before and during the siting, construction and operation of an energy facility that falls under EFSC jurisdiction. The guide is formatted to include links to resources on the left and to applicable rules and statutes on the right. Use those links when you need additional information.

As you work through application or amendment review for your project, the assigned Siting Analyst (Oregon Department of Energy project manager) will use this guide to refer you to information that will help to direct your efforts to provide the best possible information for EFSC consideration. During construction and operation, the Compliance Officer may also refer to the guide when assisting you.

**July 2015**

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## Does your project fall under EFSC Jurisdiction?

### [1. EFSC Jurisdictional Energy Facilities](#)

EFSC has jurisdiction over **facilities that meet the statutory definition of “energy facility” in ORS 469.300 (11) (a). Energy facilities under EFSC’s jurisdiction require a site certificate from EFSC before those facilities may be constructed or operated.** Certain projects fall exclusively under federal jurisdiction (LNG pipelines and facilities, for example). In those cases, EFSC has no jurisdiction or authority for review or approval. In some instances, such as projects proposed to be sited partially on federal land, facilities may be under concurrent federal and state jurisdiction, in which case the applicant will be required to obtain both federal approval and an EFSC site certificate. Projects that do not meet the definition of ‘energy facility’ for purposes of EFSC jurisdiction and are not subject to exclusive federal jurisdiction, are subject to review and approval by the local jurisdiction in which the facility is proposed to be located.

[ORS 469.300 \(11\)\(a\)](#)

[OAR 345-001-0010](#)

The Department coordinates the application for site certificate review process on behalf of EFSC but EFSC has the decision-making authority under state law.

To determine whether your project is under EFSC jurisdiction, consider both the location and the facility’s projected energy producing capacity. You will find a general description of EFSC jurisdictional energy facilities by clicking on the link on the left.

### Exemptions

The statutes exclude some facilities that otherwise are under EFSC’s jurisdiction from the site certificate requirement. The most common exemptions are for high efficiency cogeneration facilities, as defined in OAR 345-001-0010(29) and most biofuel production facilities as defined in ORS 469.300(11)(a)(G). ORS 469.320(2) lists all otherwise EFSC jurisdictional facilities for which a site certificate is not required.

[ORS 469.320](#)

[OAR 345-015-0350-0380](#)

ORS 469.320(4) explains the requirements for requesting a determination that a proposed facility is exempt from the requirement to obtain a site certificate. The Department recommends early discussions with the Department if you are proposing to develop an energy facility that may be exempt from the requirement for a site certificate for guidance on determining whether the facility qualifies for an exemption and, if so, the need and requirements for requesting an exemption determination.

## What Will EFSC Review Cost?

### [2. How are the Council and Related Activities Funded](#)

All EFSC review processes require full cost recovery: the applicant is responsible for all expenses related to the Department and EFSC's review and decision. ORS 469.421 requires EFSC to adopt a Schedule of Fees biannually, outlining estimated costs for specified review processes. However, applicants are also responsible for costs beyond the fees indicated in the Schedule of Fees. All applicants are required to enter into a Cost Reimbursement Agreement with the Department (see Application Review below) to ensure full cost recovery. A Project's complexity and controversy will have a direct bearing on the ultimate cost of an application review.

[ORS 469.421](#)

Applicants are billed for staff and Department of Justice direct project expenses. Local governments and state agencies that participate in the process may enter into an agreement with the Department of Energy to receive full reimbursement for all eligible expenses for which the applicant is responsible. EFSC may also commission a study by an independent contractor or engage third-party contractors to provide technical expertise and assistance in application review, which are also billed to the applicant.

[ORS 469.360](#)

### [3. Invoicing Frequency, Internal Review and Documentation Requirements](#)

Applicants and certificate holders are invoiced monthly. **Please communicate early with the Siting Fiscal Analyst if your company has specific requirements for billing.** Time gaps between time of service and invoicing may be greater than your accounts payable staff are accustomed to. There are significant complexities to gathering expenses from state, local and private agencies. The Invoicing Frequency, Internal Review and Documentation Requirements document lays out what you and your accounting staff can expect.

## Expected Expenses by Review Phase

### [4. Schedule of Fees](#)

#### Notice of Intent (NOI)

The applicant is responsible for all NOI-related review costs. NOI expenses include all expenses related to review of the NOI through preparation of the project order, and may include review of draft exhibits, if requested by the applicant. The cost of developing the Cost Reimbursement Agreement for the application review phase is included as an NOI phase expense.

**The NOI is not considered received until the NOI fee is received.** The applicant may pay the standard NOI fee for its facility type (Option B), or prior to NOI submittal, the applicant may submit an initial filing fee and request a customized NOI fee (Option A). A customized fee may provide a better estimate of the actual costs for the review, based on the complexities of the specific project, but will result in a higher out-of-pocket costs at the beginning of the project.

[OAR 345-020-0006](#)

Invoices will reflect the drawdown of deposited funds. No additional payments will be required until all received fees have been expended. If a balance remains when the preliminary application is received, the balance will be returned, or applied to the costs of application review, based on the applicant's request.

[5. Sample Cost Reimbursement Budget Format](#)

Application Review

Prior to submitting a preliminary application (pASC), **the applicant must request an estimate from the Department of the costs expected to be incurred in application review.** The Siting Analyst and Siting Fiscal Analyst estimate the budget based on the complexity and controversy of the project. The budget will reflect the Department's experience with similar projects. The time and expenses required for application review are impacted by the sufficiency of the application submittals. Controversial projects are more likely to lead to contested case, which can increase costs.

[ORS 469.421\(3\)](#)

[6. Draft Cost Reimbursement Agreement](#)

The Department will enter into a Cost Reimbursement Agreement with the applicant for recovery of the estimated costs, based on the estimated budget prepared by the Department. The pASC is not considered received until the Department receives a deposit of 25 percent of the estimated costs. Thereafter, monthly invoices for expenses will be sent to the applicant. The deposit is kept in reserve (in a non-interest bearing account), until the project reaches 75 percent of the estimated costs, at which time the Department utilizes the deposit to cover expenses. If the Department anticipates expenses will exceed 110% of the original estimate, the Siting Analyst will work with the applicant to amend the Cost Reimbursement Agreement. If the entire deposit is not needed to cover expenses, the final statement sent after a site certificate is executed will include a refund to the applicant of any remaining balance.

[OAR 345-021-0000\(9\)](#)

If a project is terminated or withdrawn at any time during the Notice of Intent or Application Review phases, the Department will contact all reviewing agencies and independent consultants for final expenses. The applicant will then receive a final statement, indicating the balance owed or the balance remaining. If a balance remains, the Department will refund it to the applicant.

Annual Fee

After EFSC issues a site certificate, the certificate holder is responsible for the expenses incurred by the Department for ensuring the certificate holder meets all site certificate conditions. Annually, based on a July 1-June 30 fiscal year, the Siting Division Compliance Officer and Fiscal Analyst develop individual direct and general cost estimates for each facility reflective of anticipated activity—pre-construction, construction, site visits, etc. General costs are incurred by the Council and the Department to ensure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates, any orders issued by the Department

[ORS 469.421\(5\)](#)

under ORS 469.405(3) and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. No more than 35 percent of the annual fee charged may be for the recovery of these general costs.

The Department of Energy Director executes individual orders establishing an annual fee for each facility. In late August or September, each certificate holder receives the order and an invoice for the annual fee. If expenses are less than anticipated, the balance is returned to the certificate holder, or applied to the next year's estimate, at the certificate holder's request. During the year, the certificate holder will receive monthly statements which reflect balance drawdown.

If expenses exceed the annual estimate, the certificate holder is invoiced monthly for the balance owed.

#### Amendments

Certificate holders are responsible for paying all expenses incurred by EFSC and the Department in review of amendments to site certificates. Certificate holders are invoiced monthly for all expenses incurred by EFSC and the Department related to the review and decision of the Council.

[ORS 469.421\(11\)\(b\)](#)

**Invoices not paid when due and payable are assessed a penalty of two percent of the invoice a month for the period the invoice is past due.**

## EFSC Application Review Process and Timelines

The application review process integrates all applicable state and local standards and permits necessary for siting an energy facility into a single process. The process ensures that the siting, construction, operation and retirement of energy facilities are done consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of Oregon.

[ORS 469.310](#)

### [7. EFSC Siting Process Flowchart](#)

The applicant's relationship with the Energy Siting Division begins when the applicant contacts Division staff to discuss the potential project and continues through retirement of the energy facility and return of the site to pre-construction condition. This section walks the applicant through the time period before a site certificate is granted or denied. During this period, the applicant is responsible for meeting the burden of proof that all applicable standards have been met.

### Pre-Notice of Intent

When an applicant contacts Siting to discuss the location and capacity of an energy project, division staff will gather initial information on the project and applicant, and answer general questions. The applicant may make an appointment to meet about the project during the initial contact, or at their convenience.

Prior to the Pre-NOI meeting, a Siting Analyst will be assigned to the project. At the meeting with the applicant, the Siting Analyst and other Siting Division staff will review the process, answer questions and establish an estimated timeline for the NOI submittal and review.

The Siting Division functions in a fee for service capacity, therefore they can provide only limited assistance before a Notice of Intent fee must be filed.

### Reviewing Agencies

Because application review is an inter-agency effort, other state and local agencies and governments are integral to the process. Siting staff will share information about reviewing agencies and Special Advisory Groups (SAGs) at the Pre-NOI meeting. Specific contacts at appropriate agencies will be established just prior to or after the NOI is received. The applicant should be prepared to share contact information for persons with whom they have already been working at any of the reviewing agencies.

[ORS 469.350](#)  
[ORAR 345-001-0010\(52\)](#)



## Notice of Intent

When the applicant is ready, the applicant submits the Notice of Intent with the required fee (see discussion in the Costs section for Option A and B).

The NOI provides information about the site and the characteristics of the facility. The Oregon Administrative Rules (OARs) describe the requirements for the NOI, which closely track the format of the application, but without the level of detail needed for the application. The Department sends the NOI to the reviewing agencies, SAGs and the public for comment. Agencies and SAGs are requested to provide comments that identify the regulations and ordinances that apply to the siting of the proposed facility. The public is invited to provide comments, which may serve to raise site-specific issues, or general issues of public concern.

[OAR 345-020-0011](#)

### NOI Submittal Requirements

The applicant must provide an original and two printed copies of the NOI and a single non-copy-protected electronic format (CD/DVD) version. The applicant must also provide hard copies for EFSC, if requested. The Siting Analyst will work with the applicant to determine the number of copies required and to develop the mailing list for reviewing agencies.

[OAR 345-020-0011\(3\)](#)

## [8. Property Owner Submittals](#)

**Property Owner List:** The applicant must provide a list of property owners that has been drawn from the most recent property tax assessment roll before submittal with the NOI.

[OAR 345-020-0020\(1\)\(f\)](#)

**Site Boundary:** The site boundary is the perimeter of the site of the proposed energy facility and encompasses all of its related or supporting facilities, all temporary laydown and staging areas and all siting corridors proposed by the applicant.

[OAR 345-001-0010\(55\)](#)

The site boundary is used to determine which property owners must be included in project notifications. The Siting Analyst will review the proposed NOI site boundary and work with the applicant to ensure the site boundary is sufficient and the submitted property owner list meets all legal requirements.

**GIS:** State and local agencies are using GIS shapefiles to compare geographic areas defined in rules to proposed site boundaries. The applicant can facilitate a more efficient review of the NOI, and ensure that agencies are reviewing the same areas as the applicant has reviewed, by including geographic information system (GIS) shapefiles of the proposed project site boundary with the NOI. If the shapefiles are not provided, agencies will develop their own based on the information provided. This may result in each agency considering a slightly different area when providing comments.

**Study Areas:** The NOI must include maps defining the study areas. Study areas include the site boundary and the area specified distances from the site boundary as defined by rule.

[OAR 345-001-0010\(59\)](#)

**Public Information Meeting:** The applicant is encouraged to schedule public meetings or open houses near where the proposed facility will be built during the NOI phase to introduce the project to the public in a more relaxed environment. The public may raise issues which can be addressed at the meeting or more fully addressed in the application.

The Department does not generally schedule these meetings, but the rules do allow for the public to request a meeting. If a meeting is scheduled, the applicant is obligated to attend.

### Project Order

Using the responses received from the reviewing agencies, SAGs, and the public, the Department prepares a project order. The project order establishes all state and local standards or criteria that must be met for EFSC to issue a site certificate. The project order can be amended at any time if there is new information from the applicant or the reviewing agencies.

[OAR 345-015-0160](#)

**Analysis Areas:** The project order will define the analysis areas for the Application, which replace the NOI study areas. Analysis areas are the minimum areas the applicant must study for potential impacts from the construction and operation of the proposed facility. Analysis areas may be different for different resources, similar to the study areas. Analysis areas do not limit the applicant's responsibility to assess the potential impacts of the facility. They are the areas in which significant adverse impacts from the proposed facility are likely to occur. If significant impacts could occur beyond the analysis areas, the applicant must assess those impacts in the application and show how the facility would comply with the applicable standard with regard to the larger area where impacts could occur.

### Timelines

The Department will issue the project order within 140 days following the date of submission of the NOI.

[OAR 345-015-0160\(5\)](#)

The NOI expires two years after submittal. If the applicant requests an extension to EFSC at least 45 days before the expiration date, EFSC may extend the expiration date for up to one year.

[OAR 345-020-0060](#)

### Other Activities during the NOI Phase

**Draft Exhibits:** Applicants may request review of draft application exhibits before they submit the preliminary application for site certificate. Staff or reviewing agency expenses during review of the draft exhibits are invoiced during the NOI phase. Applicants may choose to have specific exhibits

reviewed if there are questions about project order requirements or otherwise to assess compliance with application requirements. The draft exhibit review process is entirely at the applicant’s discretion. Draft exhibit review may extend the NOI phase timelines.

[5. Sample Cost Reimbursement Budget Format](#)

**Cost Reimbursement Agreement:** Approximately thirty days before the applicant plans to submit the preliminary application, the applicant must request a Cost Reimbursement Agreement from the Department. Development of the estimate, and execution of the Cost Reimbursement Agreement, are included in the NOI phase (see Expected Expenses by Review Phase, page 5).

[6. Draft Cost Reimbursement Agreement](#)

**Reviewing Agency and Special Advisory Group Contact:** While the applicant is developing the preliminary Application, it may be practical for the applicant to work directly with reviewing agencies. The direct contact and discussions allow the applicant to strengthen the application. It is important to keep the Siting Analyst aware of all conversations and agreements so that the documents prepared for the application are accurate and to avoid expensive duplication of effort. The reviewing agencies may seek reimbursement for the time they spend assisting the applicant. In that case, the applicant should expect that time to be reflected in their monthly statements from the Department.

**Application Review: Preliminary Application (pASC)**

The applicant executes the Cost Reimbursement Agreement and submits 25 percent of the estimated application fee concurrent with or before submission of the pASC. The date the Department receives the agreement, fee and pASC is considered the pASC submittal date.

[OAR 345-021-0010](#)

[9. ASC Exhibits and Related Standards](#)

The pASC must address each of the OAR Chapter 345, Division 21 application requirements. In addressing the Division 21 requirements, applicants are encouraged to submit proposed findings and conditions establishing compliance with the Council’s Division 22, and appropriate Division 23 and 24 standards. Tying the application requirements to EFSC standards will facilitate development of a complete application that thoroughly responds to and establishes compliance with EFSC standards.

[OAR 345-022](#)  
[OAR 345-023](#)  
[OAR 345-024](#)

[10. Land Use Path A vs. Path B](#)

Applicants must select whether to have the local government in which the project is located make the decision on land use compliance (“Path A”) or have EFSC make the land use decision (“Path B”) when they submit the pASC. **Once the pASC is submitted, the applicant may not choose a different land use path.**

[OAR 345-021-0010\(1\)\(k\)](#)

**Submittal Requirements**

The applicant must provide an original and two printed copies of the pASC and a single non-copy-protected electronic format (CD/DVD) version. The

applicant must provide hard copies for EFSC, if requested. The applicant is also responsible for providing hard copies of the pASC to the reviewing agencies, as directed by the Siting Analyst

The Siting Analyst will work with the applicant to determine the number of hard copies needed and to develop the mailing list and memo from the Department that will accompany the pASC sent to the reviewing agencies.

**GIS:** The applicant should provide GIS shapefiles for the pASC proposed site boundary. The Department will share the shapefiles with all reviewing agencies.

[11. Confidential Records Guidelines](#)

**Confidential Records:** Certain records required for the application may be exempt from public disclosure, subject to limitations in the public records law. Records that may be subject to confidentiality are required for three exhibits:

Exhibit S – Historic, cultural and archaeological resources

Exhibit Q – Threatened and endangered plant and animal species

Exhibit X – Noise

If the applicant requests that specific records within those exhibits be held confidential, and therefore exempt from public disclosure, the applicant is responsible for correctly submitting the information. Please review the Confidential Records Guidelines prior to submitting the pASC, and contact the Siting Analyst with additional questions.

**Completeness Review**

Concurrent with the Department’s review of the pASC, the reviewing agencies and SAGs will be given 30 days to review the pASC and submit comments or requests if they need additional information from the applicant to fully evaluate the application. The Department will notify the applicant within 60 days after the pASC is submitted whether the application is complete. If additional information is needed, the Department will issue a Request for Additional Information (RAI) describing the information the Department needs to make a determination of completeness. Generally, the Department will specify a date by when the applicant must provide the additional information. If the applicant does not respond by the required date, including any approved extensions, the Council may reject the application. The Department will review all submittals in response to RAI’s, and may include reviewing agencies in the review.

[OAR 345-015-0190](#)

**Completeness Determination:** The Department will make a determination that an application is complete when the applicant has provided sufficient information for review; i.e., when the applicant has responded to all the requirements in the project order. Completeness does not mean that an

[OAR 345-015-0190\(5\)](#)

application includes all the information needed for the Siting Analyst to recommend that EFSC make affirmative findings on all applicable EFSC Standards.

#### Completeness Submittals

After the Department has issued the completeness determination, the applicant will be asked to provide a complete application, which integrates the entire application, including all RAI responses, into a single document. The applicant will be asked to submit one original and two hard copies, as well as a non-copy protected electronic copy (CD/DVD).

#### 8. Property Owner Submittals

**Property Owner List:** When providing the complete application, the applicant must also provide a list of property owners that has been drawn from the most recent property tax assessment roll before the submittal of the Complete Application. The applicant should consult with the Siting Analyst to ensure the property owner list meets all requirements.

**GIS:** If there have been updates to the site boundary since the pASC was submitted, the applicant is encouraged to provide updated GIS shapefiles.

#### Application Review: Complete Application (ASC)

The ASC is filed on the day the Department receives the full complete application, including the original and required copies.

The ASC is provided to reviewing agencies for review. The Siting Analyst will work with the applicant to develop the reviewing agency mailing list for the ASC, as well as a distribution date. The Department will provide a memo to the reviewing agencies that asks them to provide a report that responds to specific questions, and recommends conditions for the site certificate. The applicant will send the memo and ASC to the reviewing agency mailing list. There is no public comment associated with this phase of the application process.

[OAR 345-015-0200](#)

Through a public notice, the Department will inform the public that the application is complete and provide notice of an informational meeting on the ASC. At the meeting, the Siting Analyst will explain the siting process to the public and the applicant will be responsible for providing the details of the proposed project. The Siting Analyst will work with the applicant to schedule and plan the meeting.

#### Application Review: Draft Proposed Order (DPO)

The Siting Analyst will use the information provided in the ASC and agency comments to develop the DPO.

[OAR 345-015-0210](#)

As the Siting Analyst is developing the DPO, and in response to issues raised by reviewing agencies or the public, the Department may request

additional information from the applicant and assistance from reviewing agencies. The process is intended to allow the applicant to fully develop the evidentiary record so the Department can make a thorough recommendation to EFSC.

### Standards

In preparing the DPO, staff will evaluate the application against each of the EFSC standards and make a preliminary recommendation to EFSC of whether, based on the application, the ASC satisfies each of the EFSC standards. If staff finds that the application does, or with compliance with specified conditions, can satisfy each of the EFSC standards, staff will recommend approval and issuance of a site certificate. If staff finds that the evidence in the application is not sufficient to comply with one or more EFSC standards, staff will recommend that the application be denied, unless the applicant can provide additional evidence to support compliance with each standard either through the public hearing or contested case process.

[OAR 345-022](#)

[OAR 345-023](#)

[OAR 345-024](#)

## [8. Property Owner Submittals](#)

### Public Comment Period and Hearing

**Public Notice:** When the DPO is issued, the Department will provide notice to the public and schedule a public hearing and comment period. The applicant provided ASC property owner list must be from the most recent property tax assessment roll. Please consult with the Department to determine if a new ASC property owner list is necessary or if the one submitted at the completeness determination meets the requirement. The notice must be published in at least one newspaper in the vicinity of the proposed facility at least 20 days before the public hearing.

[OAR 345-015-0220](#)

**Public Hearing:** EFSC will appoint an independent hearing officer to preside at the public hearing. Although an EFSC quorum may not be present, one or more EFSC members will likely participate in the public hearing. The hearing, which must be held in the vicinity of the proposed facility, provides the public, reviewing agencies and the applicant an opportunity to provide oral testimony on the application and DPO. Written comments may also be submitted until the close of the record at the end of the public hearing.

The public hearing is called the “Raise it or Waive it” hearing. In order to preserve the right to raise an issue in the contested case, a person must raise the issue on the record of the public hearing, either in writing during the DPO public comment period, or in writing or verbally at the DPO public hearing. The issue must be raised with sufficient specificity to afford EFSC, the Department and the applicant an adequate opportunity to respond. Persons who do not raise issues with sufficient specificity before the close of the record of the DPO hearing waive their right to raise that issue in the contested case.

After the DPO hearing, EFSC will review the DPO at a public meeting, typically the next scheduled EFSC meeting. Depending on the number of

EFSC members in attendance at the public hearing, EFSC may request a written hearing officer report prior to their review of the DPO. Department staff will provide detailed information about the project and the Department's recommendations. The public and applicant do not make additional presentations during the EFSC review. EFSC has the opportunity to question staff about the proposed facility and may direct staff to modify sections of the DPO or respond to additional issues during the DPO hearing process.

### Application Review: Proposed Order

Based on EFSC's discussion, the Department prepares the proposed order. If there were issues raised during the DPO public hearing process that require changes to the analysis, or EFSC requested changes to the DPO, the proposed order will reflect those changes.

### 8. Property Owner Submittals

When the Department issues the proposed order, it will send public notice of the proposed order to all interested parties, including reviewing agencies, the general and project specific mailing lists and property owners. The applicant provided ASC property owner list must be from the most recent property tax assessment roll. Please consult with the Department to determine if a new ASC property owner list is necessary or if the one submitted at completeness determination meets the requirement.

### Application Review: Contested Case

Concurrent with the public notice of the proposed order, the Department issues a notice of contested case. The notice is sent to the applicant and all persons who commented in person or in writing on the record of the public hearing on the DPO. The Department's notice of contested case includes a deadline for eligible persons to request party status and to raise contested case issues. Only those persons who have commented in person or in writing on the record of the DPO public hearing are eligible to request party status.

[ORS 469.370\(4\)](#)  
[OAR 345-015-0012-0085](#)

The hearing officer presides over the contested case proceeding. If there are requests for party status, the hearing officer will review the requests and grant party status as appropriate. If no one requests party status, the hearing officer will conclude the contested case proceeding.

### 12. Contested Case Process

Only the Department, the applicant and those who have been granted party status by the hearing officer may participate in the contested case proceeding. The proceeding typically includes discovery, presentation of evidence, rebuttal, cross-examination and closing argument.

Following the contested case proceeding, the hearing officer issues a proposed contested case order stating the hearing officer's findings of fact, conclusions of law and recommended site certificate conditions on the

issues in the contested case. Parties have an opportunity to file exceptions to the proposed contested case order.

### Application Review: EFSC Review/Action

After the exceptions deadline, EFSC will review the proposed contested case order, exceptions and responses to exceptions. EFSC may adopt, modify or reject the proposed contested case order.

In its final order, EFSC will grant or deny issuance of a site certificate.

An affirmative vote of at least four EFSC members is required for approval of a site certificate

[ORS 469.370\(7\)](#)

**Final Order.** The final order includes the final findings of fact and conclusions regarding compliance with each EFSC standard. If EFSC determines the proposed facility satisfies all EFSC standards, the final order grants issuance of a site certificate.

**Site Certificate.** The site certificate represents a binding agreement between the State of Oregon and the applicant and authorizes the applicant to construct and operate the energy facility approved in the final order, subject to the specified conditions. The administrative rules require certain mandatory conditions, and highlight specific conditions that may be required in some situations. Conditions are included as necessary to ensure compliance with all EFSC standards, including monitoring and mitigation and protection of the health and safety of the citizens and environment of Oregon during the construction, operation and retirement of the facility.

[OAR 345-027-0000-0028](#)

### Application Review: Appeals

Parties to the contested case may apply for rehearing from EFSC within 30 days from the date the approval or rejection is issued. Unless EFSC acts on the rehearing application within 30 days after it is filed, the application is considered denied.

[ORS 469.403](#)

Any party to a contested case may file a petition for judicial review within 60 days of EFSC's final order or within 30 days after the date an application for rehearing is denied. Issues on appeal are limited to those raised by the parties to the contested case proceeding. The Oregon Supreme Court has exclusive jurisdiction for judicial review of the Council's decision.

[ORS 469.403 \(3\)](#)



## Site Certificate Amendment

EFSC has initiated rulemaking related to site certificate amendments. It is anticipated the amendment requirements will change, but the final outcome will not be known until the rulemaking process is concluded. If you are a current certificate holder and are considering a request for amendment, contact the Compliance Officer to review which requirements will be applicable at the time you anticipate submitting the request.

## Post-Certificate Compliance

The construction, operation and retirement of facilities must be accomplished in a manner consistent with protection of the public health, safety and welfare and protection of the environment. The Compliance Officer (CO) ensures that occurs through the enforcement of the site certificate conditions.

The CO begins involvement in a project as the site certificate conditions are being drafted. The CO works with the Siting Analyst to ensure conditions are understandable and enforceable for the life of the facility. After the final order and site certificate have been executed, project activities transition to the CO. The CO's early involvement in the project ensures the CO is prepared to work with the certificate holder.

### Pre-Construction

#### Compliance Plans

Certificate holders are required to develop and implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. The certificate holder must maintain the compliance plan throughout the life of the project. The compliance plan is subject to inspection by the Department or EFSC.

[OAR 345-026-0048](#)

#### Annual Fees

The certificate holder is responsible for expenses incurred by the CO and others to ensure the certificate holder meets all site certificate conditions. As described on page 6, the Department annually estimates the cost to ensure compliance with the site certificate. The certificate holder will receive their first invoice shortly after execution of the site certificate. The annual estimate will be prorated for the first fiscal year.

[ORS 469.421\(5-6\)](#)

#### Pre-Construction Activities

The CO will schedule an inspection of the site prior to any ground-breaking activities. At that time the CO will make a pictorial record of the facility "prior" to activity and discuss construction planning.

The site certificate may include conditions for pre-construction actions and approvals. The CO will review the certificate holder submittals and may seek review assistance from reviewing agencies and/or request additional information from the certificate holder. The certificate holder may not commence construction prior to receiving written authorization from the CO.

[13. 2015 Approved Financial Institutions and Bond and LOC Templates](#)

The site certificate will require the certificate holder to submit financial assurance in a form and amount satisfactory to EFSC to restore the site to a useful, non-hazardous condition prior to beginning construction. The Council has approved template bond and letter of credit formats, and a list of pre-approved financial institutions. The certificate holder should work with the CO to consider whether the pre-approved options will meet the facility's business needs and the requirements if the certificate holder wishes to use an alternative format or financial institution.

When all pre-construction conditions have been met, the CO will provide written notice to the certificate holder that all pre-construction conditions have been met and that the certificate holder is authorized to move to construction. If the certificate holder believes they have completed all pre-construction requirements and that notice has not been received, the certificate holder should contact the CO to discuss any further required actions.

## Construction

### Beginning Construction Notification

The site certificate will include a condition that requires that construction begin and be completed by certain dates. Construction is defined in the rules (OAR 345-001-0010). The certificate holder is required to report promptly to the Department when construction begins, and describe all work on the site performed before beginning construction.

[OAR 345-026-0048](#)

### Extension Requests

The certificate holder may request extension of the beginning or completion deadlines through a request to amend the site certificate. The current amendment rules require the certificate holder to either request the amendment no later than six months before the date of the applicable deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the request, no later than the applicable deadline. There is no guarantee that the Department would recommend, or that EFSC would approve, an extension amendment. The certificate holder should communicate early with the Department if they are considering a request.

[OAR 345-027-0030](#)

### Site Certificate Termination

If the certificate holder fails to begin or complete construction by the dates established in the site certificate, EFSC may terminate the site certificate. If the certificate is terminated, future project developers would be required to begin the application process again at the NOI stage.

[OAR 345-027-0110](#)

### Semi-Annual Reporting

The certificate holder is required to provide semi-annual reports starting within six months after beginning construction and continuing throughout construction. The CO will review the reports, and any other required submittals, and provide documentation of acceptance.

[OAR 345-026-0080\(1\)a](#)

### Facility Inspections

To ensure compliance with all site certificate conditions, the CO will schedule site visits at the construction site. The frequency of the visits will be determined by the construction activity level, but may be as frequent as monthly.

[OAR 345-026-0050\(1\)](#)

## Operations

### Facility Inspections

To ensure compliance with all site certificate conditions, the CO will schedule facility inspections. The inspection frequency will be determined by the certificate conditions and requirements of the mitigation and monitoring plans, but will generally be at least annually.

[OAR 345-026-0050\(1\)](#)

EFSC may request that another agency inspect the facility to ensure the facility is being operating consistently with the terms and conditions of the site certificate. The Department and EFSC will avoid duplicating the efforts of other state, local and federal permitting agencies.

[ORS 469.430](#)

The CO shall maintain written records of the facility inspections. If the CO finds any potential violations, the CO shall promptly notify the certificate holder's onsite manager or designee and work with the certificate holder to resolve the issue.

### Public Requested Facility Inspections

Any person may request an inspection of an energy facility if they believe there is a violation of a Council order or Site Certificate condition or they believe a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions. The Department will follow the procedures included in the administrative rule if a request is received.

[OAR 345-026-0050\(2\)](#)

### Annual Reports

The certificate holder is required to provide annual reports after January 1 but no later than April 30 of each year, addressing the subjects listed in the rules, and any additional requirements included in the site certificate. The CO will review the reports, request additional information as required, and provide documentation of acceptance.

[OAR 345-026-0080\(1\)\(b\)](#)

### Incident Reporting

The certificate holder is required to notify the Department within 72 hours of occurrences involving the facility if:

[OAR 345-026-0105](#)

- a) There is an attempt by anyone to interfere with its safe operation.
- b) There is a significant natural event such as a fire, earthquake, flood, tsunami or tornado, or human-caused event such as a fire or explosion.
- c) There is any fatal injury at the facility.

Notification should be made to the CO and the Assistant Director-Energy Siting.

**Annual Financial Assurance Review**

The site certificate conditions will require the certificate holder to submit a bond or letter of credit in a form and amount satisfactory to EFSC to restore the site to a useful, non-hazardous condition and require an annual update to current value. The CO will provide an estimate of the increase in financial assurance, based on the project owner's site certificate. The certificate holder must review the estimate, respond to the CO and provide the necessary updates as indicated.

## Non-Routine Project Criteria

### Expedited Review

An applicant may request expedited review if the proposed facility qualifies under applicable statutes.

#### Small Capacity Facilities

Energy facilities that have an average electric generating capacity of less than 100 megawatts may qualify for expedited review as “small-capacity” facilities. If the applicant determines the proposed facility meets the requirements, the applicant begins the process by submitting a request for expedited review to the Department. The request must include the information required by rule. If EFSC approves the request, the applicant proceeds to submittal of the pASC. There is no NOI.

[ORS 469.370](#)

[OAR 345-015-0300\(2\)](#)

In preparing the pASC, the applicant must rely on the Division 21 application requirements and consultations with the Department and reviewing agencies to determine what information should be included. The Department will issue a project order after the pASC is received. After the project order is issued, generally, the expedited review process follows standard review process.

[OAR 345-021-0010](#)

#### Special Criteria Facilities

Gas-fired generating plants of sizes that would preclude inclusion as a small capacity facility may qualify for expedited review if they meet certain special criteria. EFSC’s process for expedited review of a special criteria facility differs from the standard review process and is outlined in the rules.

[ORS 469.373](#)

EFSC has never used the special criteria facility rules. If you are considering making an application to the Department under these rules, contact the Assistant Director-Energy Siting early in your analysis to ensure each party is aware of all requirements.

[OAR 345-015-0310-0320](#)

### Corridor Selection: Linear Facilities

If the proposed energy facility is a jurisdictional transmission line or gas pipeline as defined in ORS 469.300 (or if the proposed facility has a related or supporting transmission line or pipeline that would be a jurisdictional facility by itself), Exhibit D of the NOI must identify at least two alternative corridors, or explain why only a single corridor can meet the applicant’s needs and satisfy EFSC’s standards. The NOI must provide all required information (NOI Exhibits E, G, I, J, K, N and P) on each alternative corridor.

[OAR 345-020-0011\(d\)](#)

During the NOI review, the Department will take comments on corridor selection from the public, interested agencies and local governments. The

applicant must consider the public comments when making its final corridor selection assessment for the application (see OAR 345-021-0010(1)(b)(D)).

If the proposed transmission line or gas pipeline would cross land zoned for exclusive farm use (EFU), then an alternatives analysis may be required under ORS 215.213 or 215.283 to demonstrate that the facility is necessary for public service under ORS 214.275. The applicant must provide an analysis whether the applicant chooses Path A or Path B. The “necessary for public service” analysis is in addition to the corridor selection analysis required under OAR 345-020-0011(d).

If the proposed energy facility is a jurisdictional transmission line or gas pipeline as defined in ORS 469.300 (or if the proposed facility has a related or supporting transmission line or pipeline that would be a jurisdictional facility by itself), Exhibit B of the pASC must identify the proposed corridor the applicant has selected for the facility.

### Federal Intersect (NEPA/EIS)

When a federal agency decision will be necessary for some aspect of a proposed facility, the National Environmental Policy Act (NEPA) may require the preparation of an Environmental Impact Statement (EIS) or Environmental Assessment (EA). Council will conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. That may include coordination opportunities such as elimination of duplicative application, study and reporting requirements; establishment of conditions that are consistent with the conditions established by the federal agency; establishment of joint hearings; and issuance of the decision in a time frame consistent with the federal agency review.

[ORS 469.370\(13\)](#)

[OAR 345-021-0010\(2\)](#)

The NEPA process is an independent federal process that considers alternatives and impacts. The process differs significantly from the EFSC review process wherein EFSC must make specific findings on compliance with the standards in the administrative rules. Applicants may provide sections of the NEPA documentation or include cross-references to the relevant sections of the NEPA documentation in the appropriate exhibits of the ASC, but that documentation, by itself, is insufficient to demonstrate compliance with EFSC’s standards.

## Resources

[Useful Terms & Concepts](#)

[Useful Websites](#)

[State of Oregon Staff Roles and Responsibilities](#)

[ODFW Habitat Categorization and Mitigation Policy](#)

[ODFW Habitat Dichotomous Flowchart and Definitions](#)

[Acronyms and Abbreviations](#)

[The Relationship between the EFSC and the PUC](#)