

BEFORE THE ENERGY FACILITY SITING COUNCIL OF OREGON

**Protected Areas, Scenic Resources, and
Recreation Standards Rulemaking Project**

Responses to March 7, 2022 Request for
Informal Comments

At the February 25, 2022, Council meeting, staff presented a summary of feedback provided by stakeholders to the Council as well as preliminary rulemaking recommendations and draft proposed rules. Based on feedback and policy direction provided by Council at that meeting, staff revised the recommendations and draft proposed rules and issued a request for informal comments on the revised draft proposed rules on March 7, 2022. Stakeholders were asked to provide comments by April 11, 2022; however, comments received after that date may be considered by the Council and all comments received as of April 15, 2022 have been included in this packet. Any additional comments received before the April 22, 2022 Council meeting will be provided directly to the Council.

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CLARK Christopher * ODOE

From: Hutchinson, Matthew <matthew.hutchinson@avangrid.com>
Sent: Monday, April 11, 2022 6:53 PM
To: EFSC Rulemaking * ODOE
Subject: Comments on Draft Revisions to Council's Protected Areas, Scenic Resources, and Recreation Standards

Chris,

On behalf of Avangrid Renewables, I am providing the following comments on the Oregon Department of Energy's draft rules for the Council's Protected Area, Scenic Resources, and Recreation Standards.

- 1) Avangrid supports ODOE's efforts for "updating and simplifying the list of designations that are considered to be "protected areas" under the Protected Areas standard" ([ODOE's website](#)) yet some of the proposed revisions to definition of Protection Areas are ambiguous or may be misunderstood by applicants. For example, subpart (o) states, "a state wildlife area, refuge, or management area established under ORS chapter 496" but ORS chapter 496 is a reference to Oregon Department of Fish and Wildlife's entire authority to administer and enforce wildlife laws – and is not a specific enough statutory reference to identify a location-based protected area. It is unclear how an application would look at ORS Chapter 496 and readily understand how it defines protected areas. For example, ORS chapter 496 uses the phrases "refuge" and "management areas" only twice and in the same sentence (ORS 496.146(9)), and the term "wildlife area" is not used. This definition could be narrowed to say "a state ~~wildlife area~~, refuge, or management area established by the Fish and Wildlife Commission under ORS ~~chapter 496.146(9)~~". Overall, this level of specify in definitions is helpful to applicant when considering what areas could be defined at protected area.
- 2) Protected areas should be mappable and easy to determine by applicants and the public. In support of this rule making, ODOE should map the physical boundaries of all protected areas in Oregon and publish this data on the Oregon Renewable Energy Siting Assessment Tool website, or other website. Although this data may be a "snapshot in time," it will be a useful exercise to determine how understandable the proposed definitions are for identifying protected area near energy projects and how much time it takes. This mapping study may take considerable staff time but this same effort will be required by applicants when preparing applications for site certificate. The Council should understand the relative burden of rule changes on applicants, and this mapping exercise could generate quantifiable data.
- 3) The effective date of new rules should not apply to applications in process. Appicates begin site selection and the permitting process sometime years before a project reaches the Council for approval. Projects should not be disadvantaged for a mid-stream change in rules that could not have been predicted.
- 4) The list of protected areas to be considered in an application should be defined by the Project Order and not continually updated during the application process. By delaying the decision on protected areas to be considered until the application or amendment is deemed completed, it leaves ODOE and the applicant in a position to constantly re-evaluate the definition of protection areas and second guess themselves on a when an application or amendment can be deemed complete. This has the unintended consequence of delaying the permitting process.

Thanks for your consideration,

Matt



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April 11, 2022

VIA EMAIL

Christopher Clark
Energy Facility Siting Council Rules Coordinator
Oregon Department of Energy
550 Capitol Street NE
Salem, Oregon 97301
Email: EFSC.rulemaking@oregon.gov

Re: Idaho Power Comments on Protected Areas, Scenic Resources, and Recreation Standards Rulemaking

Attention Rulemaking Coordinator:

Idaho Power Company (“Idaho Power” or the “Company”) appreciates the significant work the Oregon Department of Energy (“ODOE”) Staff has put into this rulemaking proceeding, and has appreciated the opportunities ODOE Staff has provided for stakeholder input. One of the consistent concerns Idaho Power has raised is balancing the need to update the rules with minimizing disruption to Application for Site Certificate (“ASC”) proceedings that are already quite far along in the review process. Idaho Power appreciates that ODOE Staff has considered this concern, and has made recommendations that appear to limit the potential for disruption. Accordingly, Idaho Power files these comments in support of Staff’s recommended actions for Issues 8 and 3, and proposes additional changes to Staff’s recommended action for Issues 1, 4, and 9.¹

Applicability of Updated Rules and Standards, Issue 8

Idaho Power previously commented that the new rules and standards should not apply to the review of any applications that have been determined to be complete before the effective date of the new rules and standards.² In its March 4, 2022 Issues Analysis Document (“Issues Analysis Document”) and Draft Proposed Rules, Staff appears to agree with Idaho Power’s comments, recommending that the Council adopt a provision in each affected siting standard specifying that changes apply only to applications deemed complete on or after the effective date of the rule.³

¹ Although these comments focus on Issues 1, 3, 4, 8, and 9, Idaho Power may also provide comments on the other issues at a later point in the rulemaking process.

² Letter from Idaho Power to Christopher Clark, Re: Protected Areas, Scenic Resources, and Recreation Standards Rulemaking - Idaho Power Comments re Issue 8 (Feb. 3, 2022).

³ Issues Analysis Document at 33 (Mar. 4, 2022).

Idaho Power appreciates that Staff has recommended the alternative that the Company had previously supported, and Idaho Power continues to support Staff's recommendation. This recommended action will balance the need to update the Council's standards without prejudicing applications currently under review by requiring substantial new analysis and/or an amendment to any final applications.

Effective Date of Protected Area Designations, Issue 3

As discussed above in response to Issue 8 and in prior comments in this rulemaking, Idaho Power is concerned with any changes to the Protected Areas, Scenic Resources, or Recreation standards that would change the goalposts late in the process for pending applications. Staff's proposal that the Council consider only those Protected Areas designated on or before the date an application is deemed complete addresses Idaho Power's concerns, and the Company supports this recommendation.

Notification of Protected Area Land Managers, Issue 1; Lists of Protected Areas, Issue 4; and Methodology for Visual Impact Analyses, Issue 9

Consistent with the recommendations discussed above, Idaho Power believes that the Council should add to *proposed* OAR 345-001-0010, OAR 345-020-0011, and OAR 345-021-0010 similar language regarding the applicability of the new rules to avoid any confusion or potentially conflicting requirements as illustrated below:

- General Definitions, OAR 345-001-0010: Staff's recommendations would change the definition of "protected area" in the general definitions rule, OAR 345-001-0010.⁴ While the proposed changes to the Protected Area Standard make clear that the changes to the standard only apply to applications deemed complete on or after the effective date of the new standard,⁵ the general definitions rule does not have a similar exception, creating potential confusion or inconsistency as to which definition should be applied in proceedings involving applications deemed complete before the new rules go into effect.
- Notice of Intent, OAR 345-020-0011: Staff's recommendations would amend the Exhibit L information that must be included in a Notice of Intent regarding protected areas, seemingly intending to align the submission requirements with the proposed Protected Area Standard changes.⁶ The Council should add language regarding the applicability of the new rules to OAR 345-020-0011 to ensure the changes do not unintentionally render applications that are already deemed complete non-compliant with the Notice of Intent information submission requirements.
- Contents of an Application, OAR 345-021-0010: Staff's recommendations include changes to the information required in an application for Protected Areas, Scenic

⁴ Draft Proposed Rules at 1-2 (Mar. 4, 2022).

⁵ See *id.* at 15 (adding the following to OAR 345-022-0040: "(4) The Council shall apply the standard adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule.").

⁶ *Id.* at 5.

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Resources, and Recreational Opportunities. Similar to the discussion above, the Council should add language regarding the applicability of the new rules to OAR 345-021-0010 to ensure the changes do not apply to applications already deemed complete.

Idaho Power appreciates this opportunity to provide informal comments and looks forward to continuing engagement in this rulemaking proceeding.

Regards,

A handwritten signature in blue ink, appearing to read "Jocelyn Pease". The signature is stylized and written in a cursive-like font.

Jocelyn Pease



550 NW Franklin Ave., Suite 408
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April 11, 2022

VIA EMAIL <efsc.rulemaking@energy.oregon.gov>

Energy Facility Siting Council
Oregon Department of Energy
550 Capitol Street NE
Salem, OR 97301

RE: Protected Areas, Scenic Resources, and Receptions Standard Rulemaking

Dear Energy Facility Siting Council,

NewSun Energy (“NewSun”) appreciates the opportunity to provide comments and feedback on the Energy Facilities Siting Council’s (“EFSC” or the “Council”) Protected Areas, Scenic Resources and Recreation Standards Rulemaking Project (the “Rulemaking”). NewSun is a renewable energy development and investment company that focuses on utility scale solar, battery storage, and other power and decarbonization opportunities in the Pacific Northwest. NewSun has successfully developed 80MW-AC of solar projects in Oregon, including Bonneville Power Administration’s first ever direct-connected solar facilities, and has thousands of megawatts (“MW”) of projects under development, for some of which NewSun may seek EFSC permits. NewSun is uniquely positioned to provide comments on the Rulemaking considering NewSun’s prior experience, including dedicated involvement in federal and state agency renewable energy policy and rulemaking, and its ongoing commitment to developing renewable energy resources in the State of Oregon.

NewSun is seriously concerned with the purpose, intent, and consequences of the Rulemaking. As a threshold matter, while NewSun understands the Oregon Department of Energy’s (“Department” or “ODOE”) interest in ensuring that the areas, designations, and resources protected by the rules at OAR Chapter 345, Divisions 1, 20, 21, and 22 (the “Rules”) are up to date, clear, and consistent with the Council’s review process, NewSun questions why the Rulemaking is necessary at all.¹ The Rules regulating protected areas, scenic resources, and recreation standards are sufficient to ensure adequate protection of those resources. The Department Staff (“Staff”) analysis and recommendations to the Council do not identify adequate justifications for why the rulemaking is required or what problem or issue the

¹ Letter from Christopher M. Clark, Rules Coordinator to Oregon Energy Facility Siting Council, *Agenda Item H (Action Item) – 2022-2024 Rulemaking Update for December 16-17, 2021 Council Meeting* (Dec. 3, 2021), <https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2021-12-16-17-Item-H-Rulemaking-Update-Staff-Report.pdf>.

Rulemaking intends to resolve. NewSun is also frustrated by the fact that Staff’s most recent issues analysis document included new alternatives that were not previously proposed or discussed by stakeholders.²

More importantly, the public workshops to date have not adequately considered or analyzed the consequential outcomes of the proposed amendments, which would result in a more burdensome, costly, and delayed EFSC permitting process. Thus, the Rulemaking creates potential conflicts with legislative and executive directives and initiatives, including the Department’s own policy is to expediently site renewable energy facilities in Oregon.³ In addition, the Governor’s Climate Executive Order 20-40 directs the Department to:

- “exercise any and all authority and discretion . . . to help facilitate Oregon’s achievement of the GHG emissions reduction goals[;]”
- “prioritize and expedite any processes and procedures . . . that could accelerate reductions in GHG emissions[;]” and
- “[t]o the fullest extent allowed by law, . . . consider and integrate climate change, climate change impacts, and the state’s GHG emissions reduction goals into their planning, budgets, investments, and policy making decisions.”⁴

The legislature adopted clean energy targets in Oregon House Bill 2021 (“HB 2021”).⁵ A Rulemaking that *slows* EFSC permitting is contrary to the Governor’s directive to *facilitate* and *expedite* GHG emissions reduction goals and the legislature’s intent to reach a carbon-neutral state by 2040. Finally, the Rulemaking would counteract the Department’s commendable efforts to develop the Oregon Renewable Energy Siting Assessment (“ORESAs”) tool by adding ambiguous, ill-defined protected “areas” requiring ORESA mapping revisions and uncertainty, which defeats the primary purpose of that siting tool.⁶

For these reasons, NewSun respectfully requests that the Department and Council either: (1) abandon the Rulemaking; (2) delay the Rulemaking until the Department identifies an actual problem or issue necessitating changes; or (3) at minimum, seriously reconsider the proposed changes to account for the negative consequences that may result. To that end, NewSun recommends that the Department reconsider how changes to the Rules would impact other elements of the permitting process, including the permitting timeline and the burden on applicants.

² ODOE, *Protected Areas, Scenic Resources, and Recreation Standards Rulemaking Project Issues Analysis Document* (Mar. 4, 2022) (hereinafter “Issues Analysis”).

³ ODOE, *Executive Order 20-40 Implementation Report*, 12 (May 2020) (the objective of EFSC rulemaking is to “simplify procedures for review where practicable . . . to create efficiencies and reduce the time and costs associated with state jurisdictional reviews”).

⁴ Office of the Governor, State of Oregon, Executive Order No. 20-04, *Directing State Agencies to Take Action to Reduce and Regulate Greenhouse Gas Emissions*, 5 (Mar. 10, 2020).

⁵ See Oregon House Bill 2021 (requiring “[b]y 2040, and for every subsequent year, 100 percent [reduction in greenhouse gas emissions] below baseline emission level”); see also ORS 469A.410(1)(c).

⁶ ODOE, *Oregon Renewable Energy Siting Assessment (ORESAs)* (last visited April 7, 2021), <https://www.oregon.gov/energy/energy-oregon/Pages/ORESAs.aspx> (“Key project objectives are baselining data, information, and perspectives to create a transparent, consistent collection of trusted, accurate information in Oregon”).

GENERAL COMMENTS

1. Unintentionally Creating Ambiguity and Limiting Siting Options

As a general matter, the Rulemaking appears to create, rather than reduce, ambiguity in EFSC’s energy facility siting regulations. Specifically, the definition of “Protected Area” proposed in Division 1 and as amended in Division 22 includes the terms “potential”, “component”, and “managed”. Such terms create regulatory compliance and siting issues by increasing the ambiguity around what areas are considered “protected” and what areas are not. Only areas and resources that are established or listed under state or federal law have actually achieved protected status and, therefore, only those areas and resources should be included as protected areas requiring special analysis and consideration by applicants. Expanding the list of protected areas to areas that are not actually protected under the law unnecessarily decreases the availability of renewable energy sites.

2. Creating Uncertainty in the Permitting Process

The Rulemaking also proposes to change timelines and goalposts for permit applicants. By amending Division 22 to state that the protected designation applies to “protected areas designated on or before the date the application for site certificate or request for amendment was determined to be complete”, the Rulemaking creates a gap between the date an application is submitted and the date the protected areas are defined.⁷ Applicants spend significant time and resources scoping, designing, and siting facilities based on protected area designations *prior* to submitting an application. If protected areas are not defined until an application is deemed complete, additional areas may be listed (or, under the Rulemaking, potentially listed) for protection by project opponents *after* an application is submitted. To the extent that the Council and Department want to clarify the rules on this point, NewSun recommends that the date of protected status apply at the date of permit submittal, which would ensure that applicants have reliable, consistent siting data prior to submitting an application.

3. Slowing the Transition to Clean Energy

By expanding the list of protected areas (especially to “potential”, “component”, or “managed” areas) the Rulemaking will result in an increased burden and cost on applicants, without sufficient justification and contrary to state and federal directives. Given the executive and legislative directives on climate change both recognizing and directing expedited siting of renewable energy facilities, NewSun notes that it may be appropriate for the Department to consider rule changes that expedite, rather than delay, the EFSC permitting timeline.

SPECIFIC COMMENTS

NewSun reiterates the lack of adequate analysis or explanation as to why the Rulemaking is necessary or justified and recommends that the Rulemaking is abandoned, delayed, or further analyzed before formally proposing amendments to the Rules. NewSun provides the following,

⁷ ODOE, *Protected Area, Scenic Resources, and Recreation Rulemaking Project, Draft Proposed Rules*, 12 (Mar. 4, 2022) (hereinafter “Draft Rules”).

non-exhaustive, comments on some of the key concerns and issues in response to the Department’s latest Issues Analysis Document released on March 4, 2022.⁸

1. Issue 1 – Notification of Protected Area Land Managers

NewSun appreciates the comments submitted by agencies to ensure that managing agencies are properly notified of EFSC applications. However, NewSun does not believe that the burden should be on applicants to identify the specific information proposed to be added under Exhibit L, subsection (C) of the Rules.⁹ To the extent that Exhibit L is adopted as written in the Draft Rules, NewSun would recommend that the Department compile, update, and make publicly available a complete list of land management agencies and organizations that applicants may need to include under proposed Exhibit L. Such an exercise may also be informative in relation to the broad scope of protected areas proposed by the Rulemaking, in that it may be difficult to even identify relevant land management agencies and organizations related to the protected areas as proposed.

2. Issue 2 – Scope of Required Findings

The Rulemaking proposes to amend the scenic resources rules to remove the requirement to analyze scenic resources only within the “analysis area described in the project order.”¹⁰ NewSun would recommend that the Council adopt Staff Alternative 1 to make no change. The Issues Analysis recognizes that the current version of the rules already addresses the issue identified by Staff regarding evidence of scenic resource impacts outside the analysis area, in which case the Council could amend the project order.¹¹ The Issues Analysis also appears to recognize that while the proposed change does “not necessarily impose new study or application requirements[,]” it could result in additional burdens on applicants related to scenic areas identified by project opponents, without setting a limit on where those resources may be located or when they need to be identified and considered (as written, all the way up to issuance of a site certificate).

3. Issue 2.1 – Size of Study Areas for Protected Areas, Recreation, and Scenic Resources Standards

NewSun believes that the current rules adequately protect areas, resources, and recreation. However, if the Council proposes formal rulemaking to adopt the Draft Rules, NewSun supports Alternative 3 to reduce the study area to 1 mile for solar photovoltaic facilities, given the expanded list of protected areas and the fact that solar photovoltaic facilities have minimal impacts, including very minimal noise during facility operation. And, in terms of visual impacts, solar facilities are distinguishable from other facilities like wind turbines in that they are generally low to the ground.

4. Issue 3 – Effective Date of Areas and Designations

If amendments are adopted, NewSun would recommend Alternative 1 to Issue 3 to update the effective date to the date of adoption of new rules. As explained in the general

⁸ Issues Analysis.

⁹ March Draft Rules, at 5.

¹⁰ Issues Analysis, at 7; March Draft Rules, at 15.

¹¹ Issues Analysis, at 6.

comments, the Draft Rules create a gap problem between the time applicants analyze siting options and when an application is deemed complete.

5. Issue 4 – Lists of Protected Areas

NewSun appreciates that rules and land use designations change over time and agrees with Staff’s comment that the current list of protected areas may include outdated information.¹² However, the current version of the rules adequately protects areas and resources that are newly designated as protected. Staff’s Issues Analysis urges the Council to adopt Alternative 3 because “protected areas may be added, renamed, or redesignated at any time[.]”¹³ However, where the current list of protected areas identifies specific protected areas, it also includes the language “including, but not limited to . . .” See OAR 345-022-0040(1)(a), (b), (d), (e), (f), (g), (j), (m), and (n). Therefore, the current version of the rules already addresses Staff’s rationale, and no changes are necessary or justified.

To the extent the Council concludes a change is needed, then NewSun would recommend Alternative 2 to Issue 4 to amend the rule to provide updated lists of protected areas, rather than Alternative 3. Staff’s proposed Alternative 3 to list only specific categories and designations is problematic because it will create ambiguity in the siting process and will increase the burden on applicants to interpret rules that lack clarity. Specifically, including terms like “component”, “potential”, and “managed”, terms that are neither defined under the Rulemaking nor used in implementing statutes to provide protected status to relevant resources, increase ambiguity (rather than clarifying ambiguity, as Staff claims). Only those resources that are actually protected under state or federal law should be included in the analysis, because areas considered, proposed, or planned for protection may never actually gain protected status, which would unnecessarily limit the availability of siting locations or unnecessarily increase the burden of siting in those locations.

National Parks

NewSun recommends that the Council not accept Staff’s proposal to remove the list of National Parks located in Oregon and replace it with “[a] national park or another component of the National Park System described under 54 U.S.C. 100501.”¹⁴ Such a change would create unnecessary ambiguity because the statute does not include a list of, or even use the term, “components” in the National Park System. See 54 U.S.C. § 100101 *et seq.* Furthermore, 54 U.S.C. § 100501 merely lists “land and water” areas that *may* be included in the National Park System. The current version of the rules is adequate, as it includes “National parks, *including but not limited to* Crater Lake National Park and Fort Clatsop National Monument.” OAR 345-022-0040(1)(a). To the extent that the Council believes that list should be updated, the Issues Analysis identifies National Parks that have been added since the rule was adopted, and those National Parks could be explicitly added to the text.¹⁵

¹² *Id.*, at 12.

¹³ *Id.*

¹⁴ *Id.*, at 1, 12.

¹⁵ See *id.*, at 13.

Wild and Scenic Rivers

The proposed revisions to add rivers “designated as a component of, *or potential addition to*, the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.” does not clarify the existing Rules.¹⁶ The Rules currently protect “[s]cenic waterways designated pursuant to ORS 390.826 (Designated scenic waterways), wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation[.]” OAR 345-022-0040(1)(k). The Issues Analysis recognizes that the Wild and Scenic Rivers Act (“WSRA”), establishes a specific and limited congressional and/or state process to list rivers as potentials for designation.¹⁷ The current version of the Rules captures that legal status by protecting wild and scenic rivers *designated pursuant to* the WSRA and *listed as potentials for designation*. OAR 345-022-0040(1)(k). Staff’s proposed change could be interpreted to include rivers that have not undergone that legal process, meaning that project opponents could argue that certain rivers (or river segments) *may*, at some future point, be considered for addition. Therefore, NewSun would recommend no change.

National Wildlife Refuges

The term “component” is not used in 16 U.S.C. § 668dd and the Rulemaking would therefore create unnecessary ambiguity. The Rules already protect all “national and state wildlife refuges[.]” OAR 345-022-0040(1)(d). To the extent that the Council views a change as necessary, NewSun would recommend amending the list of designated national and state wildlife refuges, which would provide certainty and clarity to applicants.

National Fish Hatcheries

Amending OAR 345-022-0040(1)(f) to include a “component of the National Fish Hatchery System” is unjustified and would create unnecessary ambiguity in the Rules. First, the term “component” is not used in 16 U.S.C. § 760aa. Second, under the National Fish Hatchery System Volunteer Act of 2006 (Pub. L. 109–360, §1, Oct. 16, 2006, 120 Stat. 2058), Congress adopted a National Fish Hatchery “System.” The term “system” includes things like fish technology centers and fisheries program offices. 16 U.S.C. § 760aa(a)(1)(A). Staff states that “[w]hile there are not fish technology centers or fish health centers located in Oregon” the Council should nevertheless “chang[e] the scope of the category to include all units of the National Fish Hatcheries System” including a technology center in the State of Washington.¹⁸ Facilities like technology centers and offices are distinguishable from the other types of areas and resources protected under the Rules and do not require the same level of protection under EFSC’s standards. Third, Staff explains that “no new National Fish Hatcheries have been established since the rule was last amended.” For those reasons, NewSun would recommend the following change to OAR 345-022-0040(1)(f):

(f) National ~~and state~~ fish hatcheries, including but not limited to Eagle Creek and Warm Springs; . . . (p) A state fish hatchery established under ORS chapter 496 or 506.

¹⁶ *Id.*, at 15-16 (emphasis added).

¹⁷ *Id.*, at 15-16.

¹⁸ *Id.*, at 18.

Federal Land Management Plans

NewSun strongly opposes the proposed amendments to OAR 345-022-0040(1)(o). First, the Rulemaking proposes to expand the list of protected areas from those listed by the U.S. Bureau of Land Management (“BLM”) to those listed in any “federal land management plan.”¹⁹ While Staff’s Issues Analysis identifies the desire to include experimental forests or ranges and special interest areas designated by the U.S. Forest Service (“USFS”), the Draft Rules as currently written are not limited to those agencies and Staff has not explained or analyzed what other plans could be implicated. Second, Staff’s Issues Analysis states that there was disagreement during the public input process as to whether USFS experimental forests or ranges and special interest areas deserve the same level of protection as Areas of Critical Environmental Concern protected under BLM land management plans. NewSun recommends that Staff further analyze the status, purpose, and scope of USFS areas prior to formally including them in the Rulemaking, to better understand whether the same level of protection is necessary and what impacts such protection would have on facility siting.

State Park, Wayside, or Other Area

NewSun opposes the proposed amendment to OAR 345-022-0040(1)(h) to add areas owned “or managed” by the Oregon Department of Parks and Recreation (“ODPR”).²⁰ First, including the term “managed” would create ambiguity in the Rules, whereas the current version of the Rules protects state parks and waysides *listed* under statute or regulation. The Issues Analysis does not adequately explain why areas “managed” by ODPR deserve the same protection as parks that are formally listed by that department.²¹ At the same time, the Issues Analysis states that OPRD manages a vast park system including 113,142 acres, 362 miles of ocean and shores, and 3,848 acres of the Willamette River Greenway. NewSun would recommend that Staff conduct further analysis to determine which specific segments or areas of those “managed” lands would deserve protection equivalent to listed state parks before proposing such a change in formal rulemaking.

6. Issue 7 – State Scenic Resources

NewSun recommends that the Department further consider the addition and consequences of adding scenic resources identified in state land management plans to the requirements in Division 80, specifically, the inclusion of state scenic byways and bikeways. Given that many roadways in central and eastern Oregon where ideal renewable energy siting locations exist are designated state scenic byways or bikeways, and that existing electric infrastructure is often co-located in those areas, it may not be appropriate to potentially prohibit siting facilities that are in the vicinity of those areas.

7. Issue 8 – Applicability of Updated Rules and Standards

Applicants for renewable energy projects need clarity and consistency on the rules and standards that will be applied to their applications before an application is even submitted as many siting decisions and time and resource allocations are determined in the pre-application

¹⁹ March Draft Rules, at 1.

²⁰ Issues Analysis, at 21.

²¹ *Id.*

phase of development. NewSun agrees with Staff's comment that without a specific action the Council may be required to apply newly adopted to standards to existing applications and that, if new rules are adopted, those rules should only apply to applications filed on or after the effective date.²² However, the Draft Rules propose to add new subsection (4) to OAR 345-022-0040, which would make the new rules effective at the date an application is determined to be complete, rather than effective at the date of filing or amendment. This could create a goalpost issue if rules change between the time of filing and the date of completion, which could impose additional burdens on applicants.

IV. CONCLUSION

NewSun appreciates the Council's ongoing attention to critical issues related to siting renewable energy facilities in the State of Oregon to support the State's Clean Energy Targets and looks forward to the opportunity to continue working with the Council and the Department. For the reasons discussed in this letter, including the fact that many of the proposed amendments in the Draft Rules are unnecessary and would increase, rather than decrease, ambiguity in the EFSC permitting process and may conflict with the State's renewable energy goals, NewSun respectfully requests that the Council and Department abandon or delay the Rulemaking or, in the alternative, that Staff further analyze these issues prior to issuing a formal rulemaking.

Thank you for considering these comments.

Sincerely,

/s/ Max M. Yoklic _____

Max M. Yoklic
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cc: Jake Stephens, NewSun Energy
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²² Issues Analysis, at 32-33.



Submitted via electronic mail at efsc.rulemaking@energy.oregon.gov

April 11, 2022

Christopher Clark
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550 Capitol Street NE, First Floor
Salem, Oregon 97301

Re: Proposed Draft Revisions to Protected Areas, Scenic Resources, and Recreation Standards

Dear Mr. Clark:

Thank you for this opportunity to provide input on the Oregon Department of Energy's proposed draft revisions to definitions and standards for the Energy Facility Siting Council to apply in considering energy siting and conservation of protected areas, scenic resources and recreation in the state. We have been pleased and impressed by the level of public involvement your Department has offered throughout this process, as well as to the scope and purpose of the proposed revisions to facilitate more efficient energy siting in Oregon that also protects fish, wildlife and wildlands, scenic vistas and Oregonians' continued enjoyment of our natural heritage.

Oregon Natural Desert Association ("ONDA") is a nonprofit organization with a mission to protect, defend and restore Oregon's high desert for current and future generations. These vital public lands are home to diverse and sensitive populations of native flora and fauna, unrivaled wilderness and offer endless recreational opportunities for people of all walks of life. ONDA was instrumental in creating each of Oregon's three desert wilderness areas, protecting dozens of miles of desert Wild and Scenic Rivers, and establishing the Steens Mountain Cooperative Management and Protection Area. ONDA has also spent three decades securing an array of innovative protections for desert public lands and resources in Bureau of Land Management ("BLM") planning and regulatory processes that is particularly relevant to the Council's current consideration of its revised regulations. Founded in 1987, and with offices in Bend and Portland, Oregon, ONDA represents more than 10,000 members and supporters from throughout the state and across the nation.

1. General Provisions: Definitions

Wilderness Values

In the Protected Areas, Scenic Resources, and Recreation Standards Rulemaking Project Issues Analysis Document (March 4, 2022), under “Issue 4 – Lists of Protected Areas,” the Department addresses wilderness areas and wilderness study areas (“WSA”), noting that “[b]ecause a wilderness study area must be managed to preserve its wilderness characteristics until Congress acts to withdraw it from consideration, we recommend that council resolve any ambiguity in the rule by amending the rule to include all BLM Wilderness Study Areas” (Analysis: 14-15). ONDA commends the Council for this clarification.

Similar to WSAs, Lands with Wilderness Characteristics (“LWC”) are areas the BLM has actively inventoried via a public process and determined to possess the same characteristics as a wilderness or WSA. These include: (1) generally appears to have been affected primarily by the forces of nature, where the imprint of human activity is substantially unnoticeable; (2) offers outstanding opportunities for solitude or for primitive and unconfined recreation; (3) is of at least five thousand acres in size; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value (16 USC § 1131(a)). While BLM-managed LWCs are not afforded the same congressional protections as WSAs, the BLM land use planning process provides the opportunity to administratively prescribe management direction for LWCs to preserve their character.

Given LWC’s have the same characteristics as designated wilderness or WSA, and can similarly be managed by the BLM to preserve their wilderness characteristics until Congress chooses to permanently protect the area, ONDA recommends that the Council further resolve any ambiguity in the rule related to wilderness quality lands by amending the current provision to include all BLM Lands with Wilderness Characteristics where the BLM’s governing land use plan has established management direction to preserve its wilderness character. This direction will ensure that all BLM wilderness quality lands that are managed to preserve wilderness character—either now or in the future—are incorporated into the Council’s definition of a protected area.

Wild and Scenic Rivers

The Department recommends including Wild and Scenic Rivers among protected areas in the rule: “[u]pdating the rule would ensure that the new wild and scenic rivers established by congress are included as protected areas under the Council’s Standard” (Analysis: 16). ONDA commends the Council for correcting this oversight. Congress mandated that federal agencies “protect and enhance” (16 U.S.C. § 1281(a)) the “outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values” (16 U.S.C. § 1271) for which Wild and Scenic Rivers are designated. This includes a quarter- or half-mile management corridor along both sides of a designated river. Siting energy facilities within these narrow, sensitive, management zones would be antithetical to these legislated directives.

Research Natural Areas

In the Analysis, “[s]taff recommends the Council amend the rule to include all [Research Natural Areas] RNA’s because it is not clear why the rule would treat RNAs administered by the [U.S. Fish and Wildlife Service] USFS or another agency differently than an RNA administered by the BLM. We also recommend the Council include experimental areas and administratively designated Special Interest Areas on forest service lands as protected areas under the Council Standard” (Analysis: 21). ONDA concurs and commends the Department for offering this clarification. Bureau regulation and land use planning often prescribe specific, protective management of RNAs (see 43 C.F.R. § 8223.1), where development of energy facilities could negate their value for research and education on native ecological communities, unusual plant and animal associations, threatened or endangered species, geologic, soil or hydrologic characteristics, or other outstanding or unusual features (43 C.F.R. § 8223.0-5).

Wildlife Values

As the Department has also recognized in documents prepared for the Council, the proposed list of “protected areas” fails to capture administratively recognized habitat reserves and habitat connectivity for wildlife. ONDA recommends the Department and Council consider how the rule revisions might accommodate, for example, critical habitat designated under the Endangered Species Act, Conservation Opportunity Areas identified in the Oregon Conservation Strategy, and wildlife conservation areas established in federal land management planning (e.g., BLM Sagebrush Focal Areas and U.S. Forest Service Late Successional Reserves).

2. General Standards for Siting Facilities: Protected Areas

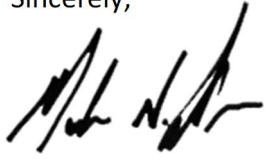
In Protected Areas, Scenic Resources, and Recreation Rulemaking Project Draft Proposed Rules (March 4, 2022), the Department recommends, in describing the proposed streamlined list of protected areas, that they generally include “an area designated for protection under federal or state statutes or regulations” (Draft Proposed Rules: 12). ONDA recommends adding “policies” to “statutes or regulations” here, as some types of protected areas might be promulgated in agency policies and/or designated in planning (based on broader Congressional authorization in statutory law) (see also above re. Wildlife Values). For example, where Congress has not established outstanding natural areas on BLM public lands, the agency itself has, in fact, designated them in agency planning as “areas with high scenic values that have been little altered by human impact.”

3. Notification to Protected Area Managers

As ONDA has also shared in Department workshops on the proposed rules revision, ensuring protected area managers receive adequate, early notice of proposed projects not only helps support participatory decision-making based on the broadest possible understanding of potential impacts of a proposed energy project, but also ensures those decisions are made more efficiently, to the benefit of both the Council and project proponents.

Thank you for this opportunity to offer comment. ONDA looks forward to our continued engagement in this important initiative.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark N. Salvo', written in a cursive style.

Mark N. Salvo
Program Director

Oregon Natural Desert Association
50 SW Bond Street, Suite 4
Bend, Oregon 97702
(541) 330-2638 x 308
msalvo@onda.org

April 11, 2022

VIA EMAIL (efsc.rulemaking@energy.oregon.gov)

Re: Public Comments on Draft Proposed Rules for Revisions to Protected Areas, Scenic Resources, and Recreational Standards

This letter provides comments on ODOE's preliminary recommendations for proposed rule revisions to the Protected Areas, Scenic Resources, and Recreation Standards (Div. 22) and related rules (Div. 1, 20, 21). We support the joint comments filed by Renewable Northwest (RNW) and Oregon Solar and Storage Industries Association (OSSIA) and encourage staff to reconsider some of their recommendations, as discussed more fully in the joint RNW-OSSIA comment letter. We want to highlight particular areas of concern and anticipate providing more detailed comments as EFSC considers the rulemaking further:

- Definition. Staff's proposed revisions to the definition of "protected areas" creates ambiguity, results in permit creep, and eliminates illustrative, plain language that make implementing the rules easier for everyone.
- Effectiveness of Rules. Any new rule should not apply to applications or amendments that have already been filed with ODOE, even if not yet deemed complete.
- Protected Areas "Goal Post." The "goal posts" for the protected areas to be included in an application or request for amendment should be earlier in the process than the date an application or RFA is deemed complete. By that point in the process, there has already been requests for additional information and agency review, and ODOE is generally close to issuing the draft proposed order. We would encourage the "goal posts" be set as of the date the preliminary application or RFA is filed.
- Defined Scope for Div. 22 Standards. We do not see any justifiable basis for removing the defined analysis area from the recreation and scenic resource standards. To make the three related standards consistent, the protected areas standard should be amended to include the same language from the recreation and scenic resource standards (Alternative 2 in the issues memo).

Thank you for your consideration and we look forward to continued participation in the EFSC rulemaking.



Laurie Hutchinson
Vice President of Renewable Project Development

April 12, 2022

To: Energy Facilities Siting Council
EFSC.rulemaking@oregon.gov

From: Susan Geer, public
susanmgeer@gmail.com

Re: Draft Proposed Rules <https://www.oregon.gov/energy/Get-Involved/rulemakingdocs/2022-03-04-R184-Draft-Proposed-Rules.pdf> .

Issues Analysis document <https://www.oregon.gov/energy/Get-Involved/rulemakingdocs/2022-03-04-R184-Issues-Analysis.pdf>

The Issues, Affected Rules, Issue Description, and a few Background statements are from the Issues document, followed by my comments:

Issue 1 – Notification of Protected Area Land Managers

Affected Rules: OAR 345-001-0010; 345-022-0040

Issue description: Rules do not require the department or applicant to give notice to or request comment.

Alternative 1 is not viable. Alternative 2 calls for making the manager of protected area(s) a “reviewing agency” while Alternative 3 simply gives them notice: “Amend rules to provide public notice to the managers of a protected area identified in the Notice of Intent, application, or Request for Amendment.” While I agree with EFSC staff that automatically making the manager of Protected Areas a reviewing agency, when they may not always wish to be or they may actually not have time to participate in an in-depth role, may not be the best choice, it seems like there could be a compromise between Alternatives 2 and 3, where the Protected Areas manager is notified, and as part of that notification they are offered the option of being a “reviewing agency” and also given the option of appointing a representative or alternate person. If they are not interested, they would not be added to the list of reviewing agencies, but they would continue to get notifications of stages in the EFSC process.

Issue 2 – Scope of Required Findings

Affected Rules: OAR 345-022-0040(1); 345-022-0080(1); 345-022-0100(1)

Issue description: The Council’s Scenic Resources and Recreation Standards both limit the scope of Council’s findings to resources in the appropriate analysis area identified in the project order. This is inconsistent with the Protected Area Standard, which contains no similar limitation. Because there is considerable overlap between the resources and impacts considered under these three standards, there may be some benefits to improving consistency between the three standards.

Alternative 1 is not viable. Alternative 2 proposes to “to limit findings to protected areas within the analysis areas established by the project order”. This is problematic from an ecological point of view. The special status species or unique communities of organisms that were the reasons for the protected area designation could well be affected by some aspect of a proposed project outside of the “analysis area”. Effects on migratory birds nesting near power lines or on fish species upstream of hydro projects

come to mind. I agree with EFSC staff, rather than artificially and perhaps tragically limiting the protected areas, that, “amending the Scenic Resources and Recreation Standards, as identified in Alternative 3, would result in more robust findings and would not result in undue burdens on the applicant because the required analysis would still be controlled by the project.” The proposed wording for OAR 345-022-0080(1) and OAR 345-022-0100(1) seems reasonable, except that it is not clear how the size and location of Analysis area vs. Study area.

OAR 345-022-0080 (3) concerning scenic resources should include a “land use management plan” adopted by not only various levels of government, but private land trusts and conservancies which offer public access.

Issue 2.1 – Size of Study Areas for Protected Areas, Recreation, and Scenic Resources Standards

Issue description: Some stakeholders recommend that the study areas for impacts to Protected Areas, Recreation, and Scenic Resources are too large, especially for renewable energy facilities.

Background: In its notice of intent, the applicant must provide an initial description of the impacts that could result from construction or operation of the proposed facility within designated study areas. Under OAR 345-001-0010(59), the “study area” for impacts to Protected Areas is 20 miles; for impacts to scenic resources, 10 miles, and for impacts to recreational opportunities, 5 miles. This information is used to inform the “analysis areas” for the application. These analysis areas may be the same as the “study areas” required for the notice of intent or may be adjusted based on the information provided in the notice of intent and any comments from reviewing agencies or the public.

After reviewing proposed Alternatives, I agree with EFSC Staff. The Analysis document states that “Because staff does not have an appropriate empirical basis to recommend changes to the study areas at this time, staff recommends Council make no changes, as described under Alternative 1.” It is especially important to note that there is no basis for reducing the size of the study areas.

Issue 2.2 – Extent of Study Areas for Facilities near State borders

Issue description: A stakeholder recommended that the Council limit study areas for impacts to Protected Areas, Recreation, and Scenic Resources to areas within the borders of Oregon.

Background: In its notice of intent, the applicant must provide an initial description of the impacts that could result from construction or operation of the proposed facility within designated study areas. Under OAR 345-001-0010(59), the “study area” for impacts to Protected Areas is 20 miles; for impacts to scenic resources, 10 miles, and for impacts to recreational opportunities, 5 miles. If the facility is proposed to be located near Oregon’s borders, the study area may extend into Washington, Idaho, or California. It is not always clear if a protected area designated by one of these neighboring states is protected under the protected areas standard, or if a scenic resource identified in the land use plan for a local government with jurisdiction outside of Oregon should be given consideration in determining what scenic resources or recreation opportunities are significant or important.

After reviewing proposed Alternatives, I agree with the EFSC Staff “Because the standards under consideration in this rulemaking protect resources that may be used and valued by Oregonians, regardless of their location, staff does not recommend changes based on this issue”.

Issue 3 – Effective Date of Areas and Designations

Affected rules: OAR 345-022-0040(1)

Issue description: *The Protected Areas Standard refers to “designations in effect as of May 11, 2007.” A number of new areas have been designated for protection since that time.*

After reviewing proposed Alternatives, I do NOT agree with the EFSC staff recommendation which is “To allow rules to remain up to date while minimizing uncertainty for applicants, staff recommends that Council amend the rule to specify that Council must make findings based on designations in effect at the time a complete application is filed, as described in Alternative 3.”

As noted in the Issues document, ORS 469.401 requires a site certificate or amended site certificate to require both the Council and applicant to abide by local ordinances, state laws, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. Clearly Protected Areas established before the date of the site certificate MUST be protected. The process for attaining Protected Area status is often long, as is the process for attaining a site certificate. It would be wrong to impact an important Protected Area, usually years in the making, because its official date of designation fell after the time a “complete application” is filed by an energy developer. In reality, following a “Complete Application” are years of processes including the draft Proposed Order, public comments, Proposed Order, and contested case process. Suggested wording:

OAR 345-022-0040(1) To issue a site certificate, the Council must find:

- (a) The proposed facility will not be located within the boundaries of a protected area designated on or before the date the site certificate is issued.
- (b) Taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impacts to a protected area designated on or before the date a site certificate is issued.

Issue 4 – Lists of Protected Areas

Affected rules: OAR 345-022-0040(1)

Issue description: *The Protected Areas Standard contains a list of designation categories and specific protected areas that may be incomplete or out of date.*

Background: *OAR 345-022-0040(1) provides a list of categories of areas designated for protection by the state or federal government that must be considered when making findings under the Protected Areas Standard. Some of the listed categories contain lists identifying specific areas within the categories that appear to be incomplete or out of date. We have provided additional background on each of the categories of protected area designations included in the current rule, as well as additional categories that provide comparable protections to resources and values in the recommendations section below.*

I agree with the EFSC staff statement “Removing the lists as described in Alternative 3 would reduce the need to update the rule, by relying solely on specific designation categories. Several commenters supported this approach as not having outdated lists in the rule would reduce confusion.”

The suggested categories and wording for these categories in the Issues document provided seems reasonable but it appears limited to federal and state designated areas. It is prejudicial to limit these to the state level and above. County, city and tribal areas in those categories (parks, monuments,

waysides, refuges, recreation areas) need to be protected so those categories should be included as categories.

A similar problem arises when it comes to natural areas. At the initiation of OAR 345-022-0040, the Nature Conservancy was the primary holder of Conservation Easements, and the State Natural Heritage Areas designation originated with them. Although The Nature Conservancy still exists, its funding has waned; other land trusts and conservation organizations have arisen and now occupy parts of the same niche that TNC once did. The natural areas scenario is now more complicated. In recent years, the management of the Natural Heritage Areas (now called State Natural Areas) was transferred to the State (currently under ORPD-Oregon Parks and Recreation Dept.), the assessment function to OSU (ORBIC-Oregon Biological Information Center) and the ownership/Conservation Easement functions were taken on by a combination of private landowners and land trusts. With so many entities involved, the connections between them are not as clear. Ideally the State of Oregon would include outreach in their Natural Areas program to coordinate the functions. Under the current situation, Conservation Easements should be a category in the rule.

Issue 6 – Linear Facilities Located in Protected Areas

Issue Description: *The current rule may permit a transmission line or natural gas pipeline to be sited in a protected area when other lesser impact alternatives are available.*

This is major Issue, and rulemaking should not be delayed! It appears that what is up in the air is 1. How many alternatives must be studied, and 2. What is the definition of a “reasonable” alternative, and 3. Are “impacts” mentioned only those to Protected Areas?

It is very apparent that rule needs updating to say more than two alternative routes must be studied by the applicant. Study of only two routes leaves little choice and leads to unnecessarily impacting Protected Areas. At least four alternative routes should be studied, and greater emphasis should be placed on avoiding designated Protected Areas but also sensitive areas such as nature preserves and conservation easements whose obvious intent is to protect significant (rare, unprotected, and/or unique) natural resources and likely to meet the Protected Area standard but have not yet been designated as such since the Protected Areas rule is not well known even among land managers. “Reasonable” alternatives would have to have been included in a federal process, if the federal process were completed before the state process. All alternative routes given approval in the federal process should be included in the state process to provide as many alternatives as possible for consideration. There could be some guidelines as to the relative length and/or relative cost of “reasonable” alternatives to counter the suggestion that the applicant would have to study an “infinite number” of alternatives. The applicant should be able to amend their application at any time to incorporate less harmful alternatives.

Considering EFSC Chapter 345, 345-020-0011 lists many details that an Applicant needs to find and include about lands that would be impacted by a proposed facility. Conspicuously missing from this list is whether a property is under a Conservation Easement, and the goals of that easement.

Contents of a Notice of Intent related EFSC rule which need to

While I agree with the EFSC Staff recommendation that they “consider these issues further in the Council’s Application Process Review rulemaking”, this should not preclude updating language in OAR 345-022-0040(2).

Issue 7 – State Scenic Resources

Affected rules: OAR 345-022-0080

Issue description: *The Scenic Resources standard does not specify that scenic resources and values identified as significant or important in state land management plans are protected under the standard.*

EFSC Staff Recommendation to OAR 345-022-0080(1) is a valid one, yet it does not address the problem of local governments which have not made the effort to list obvious scenic resources. I understand the hesitancy behind the statement in the Issues document,” Staff acknowledges that relying on land use plans and land resource management plans to identify significant or important scenic resources presents some challenges. This is further complicated by the fact the under Statewide Planning Goal 5, local governments are only encouraged, but not required, to identify scenic views and sites in a comprehensive plan. As such, staff believes that further consideration of Alternative 4 may be appropriate, but we do not have enough information at this time to recommend Council pursue this option and recommend it be considered further in future rulemaking.”

Since county and other local planning departments may not have the time or resources to spend on designating scenic areas, there should be a process for individuals or groups to nominate scenic areas to a state program. In many cases these areas might also warrant Protected Areas status.

In addition to scenic resources identified in state land management plans and local government plans, scenic resources designated in land management plans of conservation organizations and tribes. In fact the plans of same kinds of government and organizations/group as mentioned in Issues 2 and 4.

Issue 8 – Applicability of Updated Rules and Standards

Issue description: A stakeholder recommended that the application of new rules or standards to an application for Site Certificate that is under review on or before the effective date of the rules could prejudice the applicant.

The title of the issue says “updated” rules and standards, but in the Issue description the “application of new rules or standards” is what “could prejudice the applicant.” There are cases where rules are unclear or outdated in a way which may result in negative unintended long-term consequences unless the updated and clarified rules are applied to an application that is under review. That is the case with some rules about Protected, Scenic and Recreation areas. Rule revisions and updating are often undertaken because problems are noticed during review processes, so it makes sense that clarifications, updates, and revisions to those rules should be applied to make sure the rules meet their intent in an ongoing application. This is especially true when the process takes years to complete. On the other hand, rules that are *new additions* should in most cases be reserved for the next new application that comes along. While the application of a revised rule might be considered to “prejudice” an applicant, ignoring a needed revision to the rule would certainly harm protected, scenic, and recreation areas and the citizens

who care about them. Because of the vagaries and variations in interpretation of unclear rules, places which many citizens thought safe from development have been compromised.

OAR 345-001-0020(3) is a prescient rule. As the Issues document noted, the Council "contemplated the application of new rules or standards to a facility under review" when they made this rule. The Council's options should not be limited, in this case by imposing a "date of application" limitation proposed by Alternative 2 or 3 of the Issues document.

Clearly Alternative 1 is the wisest choice in to leave options open for the Council and not apply a limiting one-size-fits-all to unforeseen circumstances of the future.

Respectfully submitted,

Susan Geer

susanmgeer@gmail.com



April 12, 2022

TO: EFSC Rulemaking Staff

FROM: Diane Brandt, Oregon Policy Manager, Renewable Northwest
Angela Crowley-Koch, Executive Director, Oregon Solar + Storage Industries Association

RE: Comments on EFSC March 4 Draft Revisions of Protected Areas, Scenic Resources, and Recreation Rules

Renewable Northwest is a regional, non-profit renewable energy advocacy organization based in Oregon, dedicated to the responsible development of renewable energy resources throughout the Pacific Northwest. Our members are a combination of renewable energy businesses and environment and consumer groups. The Oregon Solar + Storage Industries Association (OSSIA) is a trade association founded in 1981 to promote clean, renewable, solar technologies. OSSIA provides a unified voice of the solar industry; OSSIA members include businesses, non-profit groups, and other solar industry stakeholders.

Renewable Northwest, OSSIA and a group of our members are actively engaged in the ongoing Protected Areas (OAR 345-022-0040), Scenic Resources (OAR 345-022-0080), and Recreation (OAR 345-022-0100) rulemaking and offer the following comments on the draft rules dated March 4, 2022. These comments include general comments, specific discussion of some issues and alternatives, and an attached redline on the Definitions section of the draft rule.

General Comments

Uncertainty Undermining Clean Energy Goals

We would like to reiterate the importance of certainty for the development of renewable energy projects in Oregon, in support of reaching the state's clean energy mandate. Given Oregon's 100% non-emitting electricity by 2040 goal which seeks to decrease carbon emissions and mitigate impacts of climate change, the process of siting renewable energy facilities in Oregon is an important topic for considered discussion. The unmitigated impacts of climate change present a primary threat to the Protected Areas, Scenic Resources, and Recreation Standards being discussed in this rulemaking, and the transition to decarbonized, renewable energy sources is a key move to address these impacts.

Decarbonizing Oregon’s energy system will require a significant buildout of renewable energy facilities, with models suggesting the most cost-effective time frame for this is before 2030. The already lengthy timeline for renewable energy facility approval and permitting processes makes a 2030 generation date possible, but somewhat ambitious given the uncertainties in the existing siting and permitting process. These uncertainties are potentially exacerbated with some of the proposed solutions presented currently in the rulemaking process, adding questions around timelines, costs, and project scope.

While the need to keep regulations up to date is essential, we are concerned about changes that inject more uncertainty into the energy facility siting process and potential impacts on renewable energy development in Oregon. As EFSC applications rely on an evidence-based process, creating uncertainty or open-ended requirements through changes in regulation places greater burden on the applicant to “prove the negative” in its submissions. This additional burden not only adds cost and time, it is also in contradiction to the objectives set out by the [Oregon Department of Energy’s \(ODOE\) Executive Order 20-04 Implementation Report](#) from May 2020 which aims to “prioritize and expedite and processes and procedures that could accelerate reductions in GHG emissions,”¹ and the stated Staff objective to “improve efficiency and effectiveness of Council’s review processes and procedures by resolving ambiguity, lack of clarity, and inconsistency in rule.”²

Unquestionably, we support responsible development of renewable energy facilities in a way that recognizes and honors Oregon’s legacy of conservation and stewardship of its natural resources, and see the transition to a decarbonized electricity system as part of accomplishing this goal through decreasing carbon emissions and mitigating climate change impacts that directly threaten the areas and activities considered in this rulemaking. Please see more in-depth comments below on some of the issues covered in the draft rules.

Administrative Load and Unclear Process

In addition to the uncertainty added to the process, it is also unclear how any expanded scope or moveable dates of accountability will be accommodated in the EFSC process. The draft rules often make the rules harder to understand for applicants and the general public. In addition, some of the draft rules will make the new ORESA mapping tool harder to use. How will the mapping tool deal with a “potential addition to the National Wild and Scenic River System?” It would be frustrating to have a new tool through the ORESA process and then immediately undermine its usefulness with ambiguity in these rules.

While the burden on the applicant is of concern, however, it is also worth flagging the burden on staff time and efforts. With new state policies requiring Oregon to reduce climate pollution and increase renewable energy, the number of applications for EFSC review will only increase.

¹ P. 10, [Oregon Department of Energy’s Executive Order 20-04 Implementation Report](#), May 2020, *General Directives to State Agencies: Expedited Agency Processes*.

² From Staff’s July 28, 2021, [Workshop #1 Presentation](#), Slide 4: Scope and Objectives.

Add this to the increased demands on the applicant for scoping areas or considering new regulations or areas up until the final approval will also create greater demands on staff and Council time and attention. We encourage staff and Council to consider the benefit derived from any increased workload.

Finally, RNW and OSSIA would like to express frustration that the alternatives we thought were being considered do not actually match up with the alternatives that were proposed in the draft rules. For example, we had understood Issue 1 to have a 4th alternative, but that alternative did not show up in the March 4, 2022, Issues Analysis Document prepared by ODOE. This made it more difficult to provide useful feedback as it was not immediately clear where the previous alternatives lined up with current alternatives.

Discussion of Issues

Issue 1 - Protected Area Manager Notification

Alternative 1 – Maintain current rule.

Alternative 2 – Make protected area managers "reviewing agencies."

Alternative 3 – Provide notice to protected area managers at the NOI, Application, and Request for Amendment stages.

While we support Staff's recommendation of Alternative 3, we request the addition of NPS' suggestion that Staff maintain a centralized list of contact information for Protected Area Managers. Any difficulties EFSC Staff might have in identifying and maintaining appropriate contacts are magnified for applicants. Considering the added burden on applicants from informing this expanded group of individuals, having the contact information centrally located and maintained by EFSC would lessen the administrative burden of this added step.

Issue 2 - Scope of Required Findings

Alternative 1 – Maintain current rule.

Alternative 2 – Limit scope of Council's findings to Protected Areas within analysis area per Project Order.

Alternative 3 – Remove limitation of scope of Council's findings to allow, but not require, impact findings outside analysis area in Project Order.

We strongly disagree with the recommendation to adopt Alternative 3. The increased scope of analysis and increased uncertainty presented in Alternative 3 does not seem warranted. We disagree with staff's assertion that it would not result in undue burdens on applicants. This change essentially makes the "analysis area" meaningless, since the Council or any commenting third party could ask for an expanded analysis area after most of the impact analysis has already been completed. This could significantly delay project review and impose significant cost burdens on an applicant.

In addition, we are unaware of any current problem arising from the required analysis under the existing Scenic Resource and Recreational Standards, which limit the findings to the area of

analysis as set by the project order. Additionally, it is unclear how an applicant would have reasonable opportunity to address areas outside of the project order's analysis area with sufficient time prior to close of the DPO. Considering that the analysis area for the Protected Areas Standard is commonly 20 miles from the facility site boundary, increasing this would add significant analysis burden on the applicant and staff while not providing a clear benefit to the process.

Staff identified an inconsistency in the nature of findings Council is required to make when determining a facility's compliance with the Protected Area Standard (OAR 345-022-0040) versus the Scenic Resources Standard (OAR 345-022-0080) and the Recreation Standard (OAR 345-022-0100). Making the Protected Areas Standard consistent with the Scenic Resources Standard and Recreation Standard as Staff proposed in **Alternative 2 seems like the prudent approach**. Alternative 2 would make sure that the required findings for three standards are consistent, which is good given that these three standards typically rely on common underlying impacts analyses (e.g., the traffic impacts analysis, the ZVI or visual impacts analysis).

We agree that there should be consistency in the scope of findings required. However, Staff's recommendation of Alternative 3 provides neither consistency nor certainty.

Issue 2.1 – Size of Study Areas for Protected Areas, Recreation, and Scenic Resources Standards

Alternative 1 – Make no changes

Alternative 2 – Reduce the study area for protected areas to 10 miles, or another distance, for all facilities

Alternative 3 – Reduce the study areas for impacts to protected areas, scenic resources, and recreational opportunities to 1 miles, for solar photovoltaic facilities

We disagree with staff's recommendation and believe that the size of study areas should be reduced, especially if other changes in the draft rules will essentially result in larger study areas. We see no reason why the study area for protected areas should be different than for scenic areas; this difference adds to the burden for applicants. **As such, we support Alternative 2 which would create consistent analysis areas among the standards.**

In addition, noise during construction does not, and should not be considered to have long-term impacts to a protected area, recreation or scenic resources. Once constructed, solar has no noise impact outside the project boundary, and so would have no long-term impact. We also question the 2016 study cited by staff – in the photographs included in the study, it was so difficult to see the thin film PV that the caption had to point out where it was in the picture, and that picture was taken from eight miles away.

Solar projects should have their own standards as directed in the Governor's Executive Order 20-04 and we strongly recommend the Council not adopt new rules until that review is complete.

Issue 3 - Effective Date of Designations

Alternative 1 – Amend rule to update the rule to reference the date of adoption of the new rules.

Alternative 2 – Amend rule to remove the date.

Alternative 3 – Amend rule to specify that Council must make findings based on designations in effect at a specific point in the siting review process.

Staff recommends adoption of Alternative 3 to specify that Council must make findings based on designations at a specified process point – the completeness date for the application for site certificate or request for amendment. While we still maintain that having the specific process point be at the time of the initial project order, the alternative recommended by staff provides a reasonable point in time for setting the “goal posts” for any newly designated areas.

Issue 4 - List of Protected Areas

Alternative 1 – Make no changes.

Alternative 2 – Amend rule to provide updated lists that identify all current protected areas.

Alternative 3 – Amend rule to remove specific protected areas and list only specific categories and designations.

As stated in previous comments, it is in all stakeholders’ interests to have clarity and predictability in the EFSC process. We also acknowledge that Alternative 1, to maintain the current list with no changes, is insufficient to ensure all current protected areas are covered given the time that has passed since its adoption. We previously supported Alternative 2, but acknowledge the administrative burden and potential to create lags in having the most accurate listings in rule. Staff’s recommendation of Alternative 3 could be a workable solution and would encourage the creation of an accompanying, illustrative list of protected areas, scenic resources, and recreation that would make the rules more accessible for applicants. Additionally, **Alternative 3 may be workable if it is designed in a way that minimizes the administrative burden on applicants and ODOE to accurately identify all protected areas to include in any given application, and ensures consistency across applications.** This would mean the inclusion of regulatory citations, which appear in the redline version of March 4, 2022, in addition to the creation of an illustrative list – all would add to clarity for applicants and help support limiting administrative burden.

In Staff’s March 4, 2022, redline it suggests using the phrase “component of” when discussing designated area definitions in Division 01. This phrase could be ambiguous and potentially introduce broad interpretations in the process of what constitutes a “component of” a defined area. [Note: Please see alternative language suggestions in the attached mark up.] Further, as proposed, the draft language appears to intentionally broaden the protected area definitions, introduce ambiguities, and create opportunities for opponents to argue EFSC and ODOE improperly exercised its discretion when reading the rules. It seems like some additional work

is needed on these definitions to ensure ODOE is not unintentionally opening itself up to unnecessary controversy.

Issue 8 - Applicability of Updated Rules and Standards

Alternative 1 – Take no specific action.

Alternative 2 – Amend OAR 345-001-0020 to clarify that the Council will review an application based on the rules in effect on the date of filing.

Alternative 3 – Adopt a provision in each affected rule or division of rules explaining that applicability of rules and Council standards is determined by the date of filing.

Alternative 4 – Applicability of Council standards determined at preliminary Application for Site Certificate stage.

We agree with staff's assessment that not having a defined goal post for application of updated standards could be problematic for applicants. We disagree with Staff's recommendation to base the "point in time" on the completeness determination for pending applications. Many applications are not deemed complete until soon before the Draft Proposed Order is issued. Setting the completeness date as the "goal post" for applying the new standards could significantly disadvantage applicants who have already gone through agency review and agency requests for additional information. We strongly encourage staff to reconsider this "vesting" point in time **and have the "goal posts" be set at the time a preliminary application (pASC) or preliminary request for an amendment is filed with ODOE which we previously suggested in our October 4, 2021 comments and have listed above as Alternative 4.** As the application process is evidence based, setting the goal post too late in the process makes sufficient and reasonable opportunity to provide evidence for the record more difficult.

Suggestions for Redline

In addition to the above, we also have comments on the March 4, 2022, Draft Rules document. Attached is a marked up version with comments on the draft with explanation and suggestions, as applicable. The edits focus on the area definitions which are now in Division 01. The comments generally focus on specificity of language and consistency in use of supporting statute.

Thank you for considering these comments and we look forward to continued engagement on this rulemaking process. We welcome any questions or follow up on any of the above comments or attached redline suggestions, if needed.

Attachment:

RNW-OSSIA Draft Rules Redline markup of March 4 Draft

Protected Areas, Scenic Resources, and Recreation Rulemaking Project
Draft Proposed Rules
March 4, 2022
RNW-OSSIA Redline Comments

DIVISION 01 – GENERAL PROVISIONS 1
345-001-0010 - Definitions 1
[\[Deleted Div. 20, 21, and 22 language - no comments on proposed revisions\]](#)

Protected Areas, Scenic Resources, and Recreation Rulemaking Project
Draft Proposed Rules
March 4, 2022

DIVISION 01 – GENERAL PROVISIONS

345-001-0010 - Definitions

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:

(2) "Analysis area" means the area or areas specifically described in the project order issued under OAR 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant must describe the proposed facility's impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under 345-015-0300 or 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.

[Below accepts ODOE's redline and then provides redline of the draft definitions]

(49) "Protected Area" means an area designated for protection under federal or state law as one or more of the following:

- (a) A national park **included in** the National Park System under 54 U.S.C. 100501;
- (b) A national monument established under 54 U.S.C. 320201 or an Act of Congress;
- (c) A **wilderness area included in** the National Wilderness Preservation System under 16 U.S.C 1131;
- (d) A river **included in** the National Wild and Scenic River System under 16 U.S.C. 1273;
- (e) A **wildlife refuge included in** the National Wildlife Refuge System under 16 U.S.C. 668dd;
- (f) A component of the National Fish Hatchery System described under **16 U.S.C. 760aa**;
- (g) A congressionally designated national recreation area, national scenic area, or special resources management unit;
- (h) A wilderness study area established under 43 U.S.C. 1782;
- (i) Land designated in a federal land management plan as:
 - (A) **An Area of critical environmental concern**;
 - (B) **An Outstanding natural area**;
 - (C) **A Research natural area**;

Commented [A1]: Suggest changing "component of" with more specific wording like "included in" or "established under"

Deleted: or another component of

Deleted: described

Commented [A2]: See above comment on other options for "component of" and "described"

Deleted: component of

Deleted: described

Deleted: et seq.

Commented [A3]: Suggest removing "potential addition to" as this seems to expand the scope beyond what is legally designated. Or, instead of this suggestion, add "Wild or scenic rivers designated pursuant to 16 U.S.C. 1261 et seq., and those rivers listed as potential designation under 16 U.S. 1261 et seq."

Deleted: designated as a component of, or potential addition to, ...

Deleted: 1 et seq

Deleted: .

Deleted: component of

Deleted: described

Commented [A4]: This reference doesn't seem to be the best fit here as it does not directly address the designated areas – perhaps revert to original language or change to "a National Fish Hatchery established under 16 U.S.C. 760aa et seq."

Commented [A5]: Suggest making this definition follow the same structure of the others and include a statutory reference and could include "an Act of Congress" like "national monument."

Commented [A6]: Are there statute references for this item? Suggest also verifying that these areas intended for inclusion are not already covered in other parts of the rule.

**Protected Areas, Scenic Resources, and Recreation Rulemaking Project
Draft Proposed Rules
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(D) An Experimental Forest or Range; or

(E) A Special Interest Area;

(j) A state park owned by the Oregon Department of Parks and Recreation for scenic, historic, natural, cultural or recreational values under ORS 390.121

(k) The Willamette River Greenway created under ORS 390.310 to 390.368;

(l) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;

(m) The South Slough National Estuarine Research Reserve, described under ORS 273.563;

(n) A scenic waterway designated under ORS 390.826;

(o) A state wildlife area, refuge, or management area established under ORS chapter 496;

(p) A state fish hatchery established under ORS chapter 496 or 506;

(q) An agricultural experiment station established by Oregon State University under ORS chapter 567; or

(r) A research forest established by Oregon State University under ORS 526.215.

* * * * *

(5152) "Reviewing agency" means any of the following officers, agencies or tribes:

- (a) The Department of Environmental Quality;
- (b) The Water Resources Commission and the Water Resources Director through the Water Resources Department;
- (c) The Fish and Wildlife Commission through the Oregon Department of Fish and Wildlife;
- (d) The State Geologist;
- (e) The Department of Forestry;
- (f) The Public Utility Commission of Oregon;
- (g) The Oregon Department of Agriculture;
- (h) The Department of Land Conservation and Development;
- (i) The Oregon Department of Aviation;
- (j) The Pacific Northwest Electric Power and Conservation Planning Council;
- (k) The Office of State Fire Marshal;
- (l) The Department of State Lands;
- (m) The State Historic Preservation Office;

Deleted: , wayside, or other area

Deleted: or managed

Commented [A7]: This statutory reference defines the powers of the Park Commission. Is there also a reference for the list or inventory of the parks system – if so, suggest this is necessary for inclusion here.

Deleted: purposes

Commented [A8]: This statute specifically lists the areas designated as scenic waterways.

Deleted: component of the Oregon Scenic Waterways System

Deleted: 805 to 390.925

Commented [A9]: ORS 496 too is broad- the citation should be specific to the designation of wildlife areas.

Commented [A10]: Similar comment as above – this needs to be more carefully tailored to have a specific statutory reference.

Deleted: , experimental area, or research center

Commented [A11]: Is there more clarity on the authority for designating these areas? The other areas listed are generally established through legislation. This citation does not offer clarity on this aspect.

**Protected Areas, Scenic Resources, and Recreation Rulemaking Project
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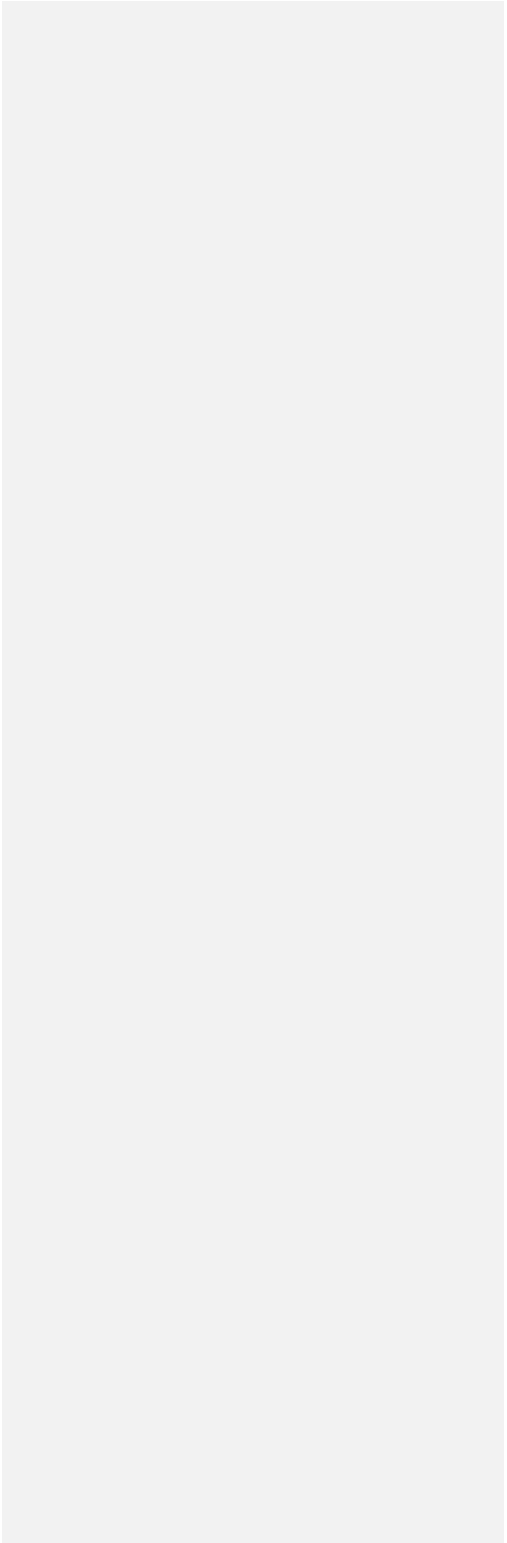
- (n) Any other agency identified by the Department;
- (o) Any tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility;
- (p) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services;
- (q) Any special advisory group designated by the Council under ORS 469.480; and
- (r) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.

(5253) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

* * * * *

(5960) "Study area" means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

- (a) For impacts to threatened and endangered plant and animal species, 5 miles.
- (b) For impacts to scenic resources and to public services, 10 miles.
- (c) For land use impacts and impacts to fish and wildlife habitat, one-half mile.
- (d) For impacts to recreational opportunities, 5 miles.
- (e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.
- (f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.
- (g) The distances stated in subsections (a) and (d) above do not apply to pipelines or transmission lines. * * * * *



April 14, 2022

To: Christopher Clark, EFSC.rulemaking@oregon.gov

From: C. Fuji and Jim Kreider, La Grande

Thank you Christopher for providing another opportunity for input on this very important rulemaking project and for replacing the incomplete comments sent late on Monday with this comment letter. Immediately below we comment on the bulleted points in your notice (preliminary recommendations), followed by brief comments on the "Issues" to supplement previous comments already submitted regarding this proposed rulemaking on Protected, Scenic and Recreation Areas.

COMMENTS on preliminary recommendations are in red below the bulleted item:

At its [meeting on February 25, 2022](#), the Council reviewed and provided feedback on preliminary recommendations for potential rule revisions and draft proposed rule language prepared by its staff. Changes under consideration include:

- Adopting an interim policy to specify that any time public notice is given during the review of a proposed facility, it will also be provided to the managing agency, **organization, or owners** of any Protected Area within the applicable study or analysis area for the project; and, in a future rulemaking proceeding, amending public notice rules to reflect this change.
Because they are not always an "agency." Non-governmental organizations (non-agencies) and private people have protected areas on their lands too.
- To facilitate notification of protected areas managers, amending information requirements to require an applicant to identify the managing agency/**organization and/or individual owner** of any protected area in the applicable study or analysis area for the project, as well as a mailing address and any other reasonably available contact information, in the notice of intent and application for site certificate.
The insertion or edit above is related to the first bullet/comment. However, in the second part, it is not clear if the 'address and contact info' is of the applicant or the owner/manager or both?
- Amending the Protected Areas Standard to remove the effective date for designations and specifying that the Council will consider impacts to protected areas designated on or before the date an application for site certificate or request for site certificate amendment is determined to be complete by the Department.
We are in agreement with removing the current 2007 date from the rule. We have objected to the remaining part of this draft in the past and will again here; under Issue #3 and 8 below, we will elaborate. This is not consistent with state law and it is not reasonable given the realities of the way reviews and decision making processes take place- -for energy developments as well as land protection. In other words, both take time. This is a developer promoted change and not in the best interest of the people of Oregon and our beloved resources.

- Updating and simplifying the list of designations that are considered to be “protected areas” under the Protected Areas Standard and removing specific examples to reduce the need for future rulemaking.
This is necessary for sure. However, what “types” of designations may need expansion, given that the private and NGO sectors have moved into this space too. (Issue #4)
- Clarifying the exception for when a linear facility may be located within a Protected Area.
Issue #6, below.
- Amending the Scenic Resources Standard to require assessment of visual impacts to important or significant State Scenic Resources.
Issue #9, below.
- Amending the Recreation and Scenic Resources Standards to allow the Council to consider evidence introduced into the record related to impacts to scenic resources and recreational opportunities outside the analysis area.
This is confusing. Are you talking about: a) a wider “area” or larger territory of impacts; or b) do you mean more evidence than that of an environmental impact being studied? Specifically:
 - a) We discuss under Issue #2 below: the analysis areas and study areas. Do we really need them both, especially if the above is allowed? (consider evidence introduced into the record related to impacts to scenic resources and recreational opportunities outside the analysis area) We think it should be allowed, because sometimes there are other factors that need consideration that a narrow analysis area doesn’t get at, for example a watershed that extends beyond the analysis boundary of a park.
 - b) It is also valuable to expand the “evidence” to be included in presenting to the Council for decision making that is not normally included in an ‘analysis or study’ conducted to determine significant impacts. Let’s take for example, the National Historic Oregon Trail Interpretive Center (NHOTIC). Evidence about the economic impacts of this protected/scenic/recreation area may be very important and the Council may need/want to hear and know about it. Whereas, limiting the evidence or information to the analysis area only, might not capture the whole picture about what are the real impacts to the resource and the community.
- To avoid disruption of projects that are currently under review, specifying that amended standards will only be applicable to the review of an application for site certificate or requests for amendment filed on or after the effective date of the rules.
This sounds like the ex parte issue that came up last year in this rulemaking process. It is not appropriate to satisfy the interests of current developers in rulemaking. They can make their specific case during formal rulemaking. The task at hand is to promulgate rules that will protect our scenic, protected and recreational resources. Current or pending projects, while possibly informative, should not be a driver for this rulemaking process. We believe this is the same as referenced above (Issue #3?) and will also elaborate below under Issue #8.

COMMENTS on specific ISSUES:

Issue 1 – Notification of Protected Area Land Managers

A combination of Alternative 2 and 3 should be created. Protected Areas managers and owners must be notified! If they do not want to be a “reviewing agency” they should be afforded an opportunity to

appoint a substitute person or organization to serve in their absence. The protected area manager/owner could simply notify the Department and developer in writing of this substitution. It doesn't need to be complicated. They also should remain on a mailing list of reviewing agencies; this way they can be updated and continue to be notified at all stages in the EFSC process, regardless of their direct participation as a reviewer, unless they specifically request in writing to be removed from the list.

Issue 2 – Scope of Required Findings

The hierarchy of Study area and Analysis areas need to be clearer. This is confusing and it occurs again under Issue 2.1, 2.2 and elsewhere. We believe that "analysis areas" are being used to reduce or limit the review and siting processes. If these rules are to be protective of our state's resources, and we believe in ecological sciences, the areas should not be reduced for convenience.

We understand that this rulemaking is intended to bring greater consistency. We can't tell you the amount of times that there are confusions, questions, and frustrations, about the study areas and their boundaries or buffer zones, as compared with what is designated as an "analysis area." To us, we recommend going with Study Areas, set in rule, as the foundation, for consistency. Then, consider analysis areas as something that is *possible* but it would need a special carve-out with approval from either the Council or the reviewers, to make it so.

In other words we recommend keeping the study area and analysis area the same – UNLESS a specific request is made or warranted, and an approval of all reviewing agencies is made (i.e.: a reduction of study area to an analysis area). Or, the Council could also be assigned to this decision? Either way, if this occurs, then an analysis area could be established and clearly stated in a Project Order.

Related, you have also proposed insertion of for OAR 345-022-0080:

3) A scenic resource is considered to be significant or important if it is identified as significant or important in a land use management plan adopted by one or more local, tribal, state, or federal government or agency. (NOTE: Also see recommendation for Issue 7.)

We propose that this needs to add in yellow:

3) A scenic resource is considered to be significant or important if it is identified as significant or important in a **most recent** land use management plan adopted by one or more local, tribal, state, or federal government or **other land trust, conservation, preservation, or similar private land use** agency; **or if said resource/area is pending a historic or land-use designation.** (NOTE: Also see recommendation for Issue 7.)

Issue 3 – Effective Date of Areas and Designations

ORS 469.401 requires a site certificate or amended site certificate to require both the Council and applicant to abide by local ordinances, state laws, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is state law and an administrative rule cannot trump this law.

There is no reason to change this except for the developer's complaints about lacking "certainty." But developers are not the only ones who face long and detailed approval processes. Looking at how long it takes for many public and private land use designations (e.g.: listing on historical registers, listing or

development of conservation areas, creation of conservation easements, and other protective designations) take just as long; developer's are not unique and should not be given deference.

If this really needs amendment given EFSC's mission *to site* facilities, it would seem that there are other options:

1. Use the date of the Proposed Order (PO) for an EFSC facility because at that point, there has been a more granular analysis of the project and these special areas would have surfaced and been identified. At the application phase, it's much too early. In practicality, it is not until the DPO phase that the public and/or other interests seem to take notice. If you are to minimize or avoid contested cases because of this issue, it would behoove the Council to wait to be sure that there hasn't been something pending that hasn't been identified.
2. A comparable advanced stage bench mark for all processes could be used. Staff would need to review the steps for the types of protected area applications to establish common milestones.
3. Retroactively use the date a protected area was given protected status, regardless of the date of the application. If an area was deemed to be worthy of protection it should be retroactive to that date (or its application date.) Let's face it, the area met the protected status because it was deemed worthy of protection. If something is being planned to be built in, through, around, or above it does not matter. It was protected because it had value in the past that was unrecognized. Once recognized it has that value now and into the future.

Example – the American Disabilities Act. We did not recognize the injustices that temporary able bodied people perpetrated against people with disabilities. We passed laws giving them certain protections immediately, into the future, and retroactively.

Issue 4 – Lists of Protected Areas

Removing the listing (previous rule) is prudent and reduces the need for on-going updating. However, the categories need expanding to include more than state and federal lists. Need to include local and tribal jurisdictions—AND--private lands' special designations (e.g.: nature conservancy like or land trusts). It is not clear if and where these are included?

Over the years, as governmental agencies have slowed the process of changing land designations for whatever reasons (budgets, low staffing, less public interest—especially in rural communities, other priorities, etc), the private and NGO sectors have moved in to fill this space. Today, these other sectors are the growing good stewards of the land. Let's not leave them out to dry; they need to be part of this rule as well.

Issue 5 – Outstanding Resource Waters -- No Comments.

Issue 6 – Linear Facilities Located in Protected Areas

It is very apparent that the rule needs updating to say more than two alternative routes must be studied by the applicant. Study of only two routes leaves little choice and leads to unnecessarily impacting Protected Areas. It could also lead to a gaming of the system, pitting one group over/against another. Granted, various alternatives could be created that create false choices and more "gaming." Therefore we see a couple of options:

1) The reviewing agencies are presented with various alternatives and asked which (or more, or less alternatives) should be studied and included in the analysis.

2) Have the rule say X number of alternatives, *plus any federal, tribal or local alternatives* as appropriate, must be included. This second option would reduce the number of things that the reviewing agencies have to approve or comment about; therefore it could be desirable from that standpoint. However, if the reviewing agencies were expanded and include private and NGO sectors, then it could prevent 'gaming' and prevent un-necessary or frivolous study, if option 1 were in the rule.

"Reasonable" alternatives would have to have been included in a federal NEPA process, if the federal process were applicable. All alternative routes given approval in the federal process should be included in the state process to provide as many alternatives as possible for consideration. Local alternatives, in addition to tribal and other stakeholder groups, should also be given consideration.

There could be some guidelines as to the relative length and/or relative cost of "reasonable" alternatives to counter the suggestion that the applicant would have to study an "infinite number" of alternatives. The applicant should be able to amend their application at any time to incorporate less harmful alternatives. This amendment (if subsequent to the DPO phase) could be given its own unique comment period to bring the analysis of the Protected, scenic and rec area (as applicable) - in alignment with the remaining review process so the site certificate determination happens all at once.

Finally, with regard to the federal alternatives and reviews, this new rule needs to align with ORS 469.370 Policy, and 469.310(13): "For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall 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...." Since the current law is required to provide an alternatives analysis of at least two corridors – a route reviewed by a federal agency, must be one (or more) of these alternatives we are discussing herein.

Issue 7 – State Scenic Resources

We empathize with staff that: "Staff acknowledges that relying on land use plans and land resource management plans to identify significant or important scenic resources presents some challenges. This is further complicated by the fact the under Statewide Planning Goal 5, local governments are only encouraged, but not required, to identify scenic views and sites in a comprehensive plan. As such, staff believes that further consideration of Alternative 4 may be appropriate, but we do not have enough information at this time to recommend Council pursue this option and recommend it be considered further in future rulemaking."

Since county and other local planning departments may not have the time or (human and financial) resources to spend on designating scenic areas or updating their comprehensive plans, there should be a process for **groups to nominate scenic areas** to the EFSC process which might also initiate acceptance into a state program. In the staff report under Alternative 4, you mentioned that "a stakeholder recommend the Council amend the rule to use an alternative approach to identify significant or important scenic resources. This approach would allow scenic resources that are not identified in a land use or resource management plan but are identified as significant or important by a reviewing agency,

local government, or interested member of the public to be considered under the rule. Staff notes that a more open process would likely result in a more comprehensive assessment of what scenic resources could be impacted by a proposed facility, but that additional work may be needed to develop procedures and criteria for the nomination and evaluation of scenic resources.”

We recommend that, at least in the near-term, this approach be incorporated into the rule, with the exception of “an interested member of the public.” If you take that part out, would it be any more palatable to the staff? A member of the public could take up the issue with their “reviewing agency” outside of the EFSC process making it less complex for staff or the Council in the near-term. This can take the same form as the “alternatives” process described above under Issue #6. By aligning the “alternatives” review approach of Issue 6 and 7 you could further your goal of internal consistency.

Issue 8 – Applicability of Updated Rules and Standards

We realize that this is a big conundrum for the draft rules and alignment across state laws and EFSC rules. However, the proposed draft is very developer-centric and we are strongly opposed. We understand that developers want regulatory certainty. We all want certainty. Landowners, recreation area managers, non-profit land protection organizations, and the general public are all looking for certainty. But it is not the world we live in.

Land protections take time, creating land management plans take time, and designing an energy facility takes time. In an ideal world, all the entities and interests would know of each others’ plans in advance or, (at minimum) identified during the review process. This is exactly what many of the issues above are trying to mitigate. Hence, and in the spirit of ORS 469.401—and possibly others—we feel that the only thing that you can do in the near-term is Alternative 1: leave it alone—take no specific action.

If the above issues are put into the rules, it is possible that this Issue #8 will be mitigated and not be needed. However, if it is to be addressed, then it needs to be emphasized that developers are NOT the only ones whose interests, time, and financial resources, matter. The land managers, owners, and other recreation interests need to be considered. The developers may be claiming that citizens or groups will get some kind of protected status just as a means of interfering with their planned development. However, this is far from the truth given that land protections and recreation areas take an equally long time to create and develop. It seems to us that this issue has evolved in accordance with the strong developer voices present and is not inclusive of Oregonians.

Issue 9 – Methodology for Visual Impact Analyses

For starters, this is a key area that needs to align with “study areas” and NOT analysis areas. Affirm that scenic areas are a 10 mile buffer. Analysis areas are just too limiting – especially for visual impacts.

While we would greatly desire this Issue to be resolved in this rulemaking, it is not going in a good direction and seems to be more of the same with different jargon. It seems to us that people are (*somewhat*) in agreement that Alternative 2 would work, rather than: no action (alt 1) or creating an EFSC assessment methodology (alt 3). So, focusing on Alternative 2, we have these suggestions:

During the Notice of Intent and/or during the phase of identifying and coordinating the reviewing agencies/ representatives, the developer proposes **which** established visual assessment methodology that they believe should apply to their project. Similar to above (Issues 6 and 7), the reviewing agencies would weigh-in and agree to this assessment methodology **in its entirety**; or the developers asks for an exception, if for example, the federal agency has already done the baselines.

If the draft rule proposed goes forward, we think that your sub-sections A through G are still missing key points; more specifically:

A) needs to align with the other items above. Namely, the land use plans of governmental agencies are not enough! Align with the others listed, or nominated, as under Issue 4 and Issue 7 above, respectively.

B) do not allow cherry-picking of the methodology. The most credible visual assessment methodologies have been peer-reviewed and are to be conducted in their totality, not fragmented. Therefore, **ONLY** as some kind of *exception* that the reviewing agencies (or Council as a substitute) approve, should be allowed.

C) is fine as an **initial assessment** and probably good to include in the early stages; however, reviewing of the plans (under A) that exist and *telling* the department or Council what methodology they applied after the fact is not appropriate. This description should be included in a “request” for the visual assessment methodology to apply. Once all is decided (Council or reviewing agency approval), it should go into a Project Order to be implemented.

D) We believe that the “best practices” in visual assessments are evolving and this list is not sufficient. For example, the direction someone is looking, while important at a highway scenic viewpoint, misses the point. What is emerging in the literature are assessments that take into account what do people “experience” while viewing the resource; what do they feel and how are they engaging with the resource. In other words: not only what your eyes see in particular direction.

Overall, we need to say that the informal comment period has been beneficial in hashing out some of the key issues but it’s also been enough. It is time for formal rulemaking! This is our third round of comments; we participated in two of three workshops, and Fuji had a phone call with Chris Clark. We are ready to move on to rulemaking as the continued delay only harms more areas and resources begging for protection.

Thank you for your consideration and efforts in this complex process,

Fuji and Jim Kreider
6036 Marvin Road
La Grande, Oregon 97850

April 14, 2022

To: Energy Facilities Siting Council
EFSC.rulemaking@oregon.gov

From: Meg Cooke, public
mcooke@eou.edu

Re: Draft Proposed Rules <https://www.oregon.gov/energy/Get-Involved/rulemakingdocs/2022-03-04-R184-Draft-Proposed-Rules.pdf> .

Issues Analysis document <https://www.oregon.gov/energy/Get-Involved/rulemakingdocs/2022-03-04-R184-Issues-Analysis.pdf>

The Issues, Affected Rules, Issue Description, and a few Background statements are from the Issues document, followed by my comments:

Issue 1 – Notification of Protected Area Land Managers

Affected Rules: OAR 345-001-0010; 345-022-0040

Issue description: Rules do not require the department or applicant to give notice to or request comment.

Alternative 1 is not viable. Alternative 2 calls for making the manager of protected area(s) a “reviewing agency” while Alternative 3 simply gives them notice: “Amend rules to provide public notice to the managers of a protected area identified in the Notice of Intent, application, or Request for Amendment.”

I suggest a compromise between Alternatives 2 and 3, where the Protected Areas manager is notified, and as part of that notification they are offered the option of being a “reviewing agency” and also given the option of appointing a representative or alternate person. If they are not interested, they would not be added to the list of reviewing agencies, but they would continue to get notifications of stages in the EFSC process.

Issue 2 – Scope of Required Findings

Affected Rules: OAR 345-022-0040(1); 345-022-0080(1); 345-022-0100(1)

Issue description: The Council’s Scenic Resources and Recreation Standards both limit the scope of Council’s findings to resources in the appropriate analysis area identified in the project order. This is inconsistent with the Protected Area Standard, which contains no similar limitation. Because there is considerable overlap between the resources and impacts considered under these three standards, there may be some benefits to improving consistency between the three standards.

Alternative 1 is not viable. Alternative 2 proposes to “to limit findings to protected areas within the analysis areas established by the project order”.

Alternative 2 is problematic from an ecological point of view. The species or communities of organisms falling under protected status could be affected by some aspect of a proposed project outside of the “analysis area.” Rather than artificially limiting the protected areas, “amending the Scenic Resources and Recreation Standards, as identified in Alternative 3, would result in more robust findings and would not result in undue burdens on the applicant because the required analysis would still be controlled by the project.” However, the proposed wording for OAR 345-022-0080(1) and OAR 345-022-0100(1) does not clarify the distinction between an Analysis area and a Study area. OAR 345-022-0080 (3) concerning scenic resources should include a “land use management plan” adopted by not only various levels of government, but private land trusts and conservancies which offer public access.

Issue 2.1 – Size of Study Areas for Protected Areas, Recreation, and Scenic Resources Standards

Issue description: Some stakeholders recommend that the study areas for impacts to Protected Areas, Recreation, and Scenic Resources are too large, especially for renewable energy facilities.

Background: In its notice of intent, the applicant must provide an initial description of the impacts that could result from construction or operation of the proposed facility within designated study areas. Under OAR 345-001-0010(59), the “study area” for impacts to Protected Areas is 20 miles; for impacts to scenic resources, 10 miles, and for impacts to recreational opportunities, 5 miles. This information is used to inform the “analysis areas” for the application. These analysis areas may be the same as the “study areas” required for the notice of intent or may be adjusted based on the information provided in the notice of intent and any comments from reviewing agencies or the public.

I agree with EFSC Staff regarding this issue: “Because staff does not have an appropriate empirical basis to recommend changes to the study areas at this time, staff recommends Council make no changes, as described under Alternative 1.” It is especially important to note that there is NO basis for reducing the size of the study areas.

Issue 2.2 – Extent of Study Areas for Facilities near State borders

Issue description: A stakeholder recommended that the Council limit study areas for impacts to Protected Areas, Recreation, and Scenic Resources to areas within the borders of Oregon.

Background: In its notice of intent, the applicant must provide an initial description of the impacts that could result from construction or operation of the proposed facility within designated study areas. Under OAR 345-001-0010(59), the “study area” for impacts to Protected Areas is 20 miles; for impacts to scenic resources, 10 miles, and for impacts to recreational opportunities, 5 miles. If the facility is proposed to be located near Oregon’s borders, the study area may extend into Washington, Idaho, or California. It is not always clear if a protected area designated by one of these neighboring states is protected under the protected areas standard, or if a scenic resource identified in the land use plan for a local government with jurisdiction outside of Oregon should be given consideration in determining what scenic resources or recreation opportunities are significant or important.

I agree with the EFSC Staff on this issue: “Because the standards under consideration in this rulemaking protect resources that may be used and valued by Oregonians, regardless of their location, staff does not recommend changes based on this issue.”

Issue 3 – Effective Date of Areas and Designations

Affected rules: OAR 345-022-0040(1)

Issue description: *The Protected Areas Standard refers to “designations in effect as of May 11, 2007.” A number of new areas have been designated for protection since that time.*

I do NOT agree with the EFSC staff recommendation on this issue: “To allow rules to remain up to date while minimizing uncertainty for applicants, staff recommends that Council amend the rule to specify that Council must make findings based on designations in effect at the time a complete application is filed, as described in Alternative 3.”

As noted in the Issues document, ORS 469.401 requires a site certificate or amended site certificate to require both the Council and applicant to abide by local ordinances, state laws, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. Clearly Protected Areas established before the date of the site certificate MUST be protected. The process for attaining Protected Area status is often long, as is the process for attaining a site certificate. It would be wrong to impact an important Protected Area, usually years in the making, because its official date of designation fell after the time a “complete application” is filed by an energy developer.

Suggested wording:

OAR 345-022-0040(1) To issue a site certificate, the Council must find that:

- (a) The proposed facility will not be located within the boundaries of a protected area designated on or before the date the site certificate is issued.
- (b) The design, construction and operation of the facility are not likely to adversely impact a protected area designated on or before the date a site certificate is issued.

Issue 4 – Lists of Protected Areas

Affected rules: OAR 345-022-0040(1)

Issue description: *The Protected Areas Standard contains a list of designation categories and specific protected areas that may be incomplete or out of date.*

Background: *OAR 345-022-0040(1) provides a list of categories of areas designated for protection by the state or federal government that must be considered when making findings under the Protected Areas Standard. Some of the listed categories contain lists identifying specific areas within the categories that appear to be incomplete or out of date. We have provided additional background on each of the categories of protected area designations included in the current rule, as well as additional categories that provide comparable protections to resources and values in the recommendations section below.*

I agree with the EFSC staff statement that: “Removing the lists as described in Alternative 3 would reduce the need to update the rule, by relying solely on specific designation categories. Several commenters supported this approach as not having outdated lists in the rule would reduce confusion.” The suggested categories and wording for these categories in the Issues document provided seem reasonable but are limited to federal and state designated areas, which is problematic. County, city and tribal areas in those categories (parks, monuments, waysides, refuges, recreation areas) need to be protected and should be included.

A similar problem arises when it comes to natural areas. At the initiation of OAR 345-022-0040, the Nature Conservancy was the primary holder of Conservation Easements, and the State Natural Heritage Areas designation originated with them. Although The Nature Conservancy still exists, its funding has waned; other land trusts and conservation organizations have arisen and now occupy parts of the same niche that TNC once did. The natural areas scenario is now more complicated. In recent years, the management of the Natural Heritage Areas (now called State Natural Areas) was transferred to the State (currently under ORPD-Oregon Parks and Recreation Dept.), the assessment function to OSU (ORBIC-Oregon Biological Information Center) and the ownership/Conservation Easement functions were taken on by a combination of private landowners and land trusts. With so many entities involved, the connections between them are not as clear. Ideally the State of Oregon would include outreach in their Natural Areas program to coordinate the functions.

Issue 6 – Linear Facilities Located in Protected Areas

Issue Description: *The current rule may permit a transmission line or natural gas pipeline to be sited in a protected area when other lesser impact alternatives are available.*

This rule needs to be updated to require the applicant to consider more than two alternative routes. Study of only two routes leaves little choice and leads to unnecessarily impacting Protected Areas. At least four alternative routes should be studied, and greater emphasis should be placed on avoiding not only designated Protected Areas but also sensitive areas, including nature preserves and conservation easements whose obvious intent is to protect significant (rare, unprotected, and/or unique) natural resources likely to meet the Protected Area standard but not yet been designated as such. “Reasonable” alternatives would have to have been included in a federal process, if the federal process were completed before the state process. All alternative routes given approval in the federal process should be included in the state process to provide as many alternatives as possible for consideration. There could be some guidelines as to the relative length and/or relative cost of “reasonable” alternatives to counter the suggestion that the applicant would have to study an “infinite number” of alternatives. The applicant should be able to amend their application at any time to incorporate less harmful alternatives.

Considering that the EFSC Chapter 345, 345-020-0011 lists many details that an Applicant needs to find and include about lands that would be impacted by a proposed facility, conspicuously missing from this list is whether or not a property is under a Conservation Easement, as well as what the goals are of that easement.

Issue 7 – State Scenic Resources

Affected rules: *OAR 345-022-0080*

Issue description: *The Scenic Resources standard does not specify that scenic resources and values identified as significant or important in state land management plans are protected under the standard.*

EFSC Staff’s Recommendation to OAR 345-022-0080(1) is a valid one, yet it does not address the problem of local governments which have not made the effort to list obvious scenic resources. I understand the hesitancy behind the statement in the Issues document, “Staff acknowledges that relying on land use plans and land resource management plans to identify significant or important scenic

resources presents some challenges. This is further complicated by the fact the under Statewide Planning Goal 5, local governments are only encouraged, but not required, to identify scenic views and sites in a comprehensive plan. As such, staff believes that further consideration of Alternative 4 may be appropriate, but we do not have enough information at this time to recommend Council pursue this option and recommend it be considered further in future rulemaking.”

Since county and other local planning departments may not have the time or resources to spend on designating scenic areas, there should be a process for individuals or groups to nominate scenic areas to a state program. In many cases these areas might also warrant Protected Areas status.

In addition to scenic resources identified in state land management plans and local government plans, scenic resources designated in land management plans of conservation organizations and tribes should be included.

Issue 8 – Applicability of Updated Rules and Standards

Issue description: A stakeholder recommended that the application of new rules or standards to an application for Site Certificate that is under review on or before the effective date of the rules could prejudice the applicant.

The title of the issue says “updated” rules and standards, but in the Issue description the “application of *new* rules or standards” is what “could prejudice the applicant.” There are cases where rules are unclear or outdated in a way which may result in negative unintended long-term consequences unless the updated and clarified rules are applied to an application that is under review. That is the case with some rules about Protected, Scenic, and Recreation areas. Rule revisions and updating are often undertaken because problems are noticed during review processes, so it makes sense that clarifications, updates, and revisions to those rules should be applied to make sure the rules meet their intent in an ongoing application. This is especially true when the process takes years to complete. However, rules that are *new additions* should in most cases be reserved for the next new application that comes along. While the application of a revised rule might be considered to “prejudice” an applicant, ignoring a needed revision to the rule would certainly harm protected, scenic, and recreation areas and the citizens who care about them. Because of the vagaries and variations in interpretation of unclear rules, some places that citizens thought safe from development have been compromised.

OAR 345-001-0020(3) is a prescient rule. As the Issues document noted, the Council “contemplated the application of new rules or standards to a facility under review” when they made this rule. The Councils options should not be limited, in this case by imposing a “date of application” limitation proposed by Alternative 2 or 3 of the Issues document.

Clearly Alternative 1 is the wisest choice in leaving options open for the Council and not apply a limiting one-size-fits-all to unforeseen circumstances of the future.

Respectfully submitted,

Meg Cooke

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From: [Aric Johnson](#)
Sent: Friday, April 15, 2022 8:36 AM
To: [EFSC Rulemaking * ODOE](#)
Subject: Protected areas

- Adopting an interim policy to specify that any time public notice is given during the review of a proposed facility, it will also be provided to the managing agency of any Protected Area within the applicable study or analysis area for the project; and, in a future rulemaking proceeding, amending public notice rules to reflect this change. **Comment: Public notice is imperative to allow citizens affected by proposed facilities an opportunity to participate and provide feedback to decision makers. Specific communication to managers of protected areas allows those with the background and relevant knowledge of unique features associated with that protected area an opportunity to provide feedback to the council or provide alternatives.**
- To facilitate notification of protected areas managers, amending information requirements to require an applicant to identify the managing agency of any protected area in the applicable study or analysis area for the project, as well as a mailing address and any other reasonably available contact information, in the notice of intent and application for site certificate. **Those proposing changes to a protected area should be responsible for notifying all protected area managers, not leaving it up to the managers to constantly search for "new" proposals that may be proposed for areas that they manage. One missed "public notice" in a local newspaper could result in no input or knowledge of a proposed facility.**
- Amending the Protected Areas Standard to remove the effective date for designations and specifying that the Council will consider impacts to protected areas designated on or before the date an application for site certificate or request for site certificate amendment is determined to be complete by the Department. **Comment: Since applications can take years to review and approve, additional protected areas may have been added post application. All designations should be considered before approval of any site certificate.**
- Updating and simplifying the list of designations that are considered to be “protected areas” under the Protected Areas Standard and removing specific examples to reduce the need for future rulemaking. **Comment: Periodic review of the list should be provided to allow for inclusion of new information, however consolidation of similar descriptions of protected**

area definitions could be used provided those consolidations don't result in reduced scrutiny of unique protected areas.

- Clarifying the exception for when a linear facility may be located within a Protected Area. **No Comment**
- Amending the Scenic Resources Standard to require assessment of visual impacts to important or significant State Scenic Resources.**Comment: I concur. This is often the most invasive impact to the public.**
- Amending the Recreation and Scenic Resources Standards to allow the Council to consider evidence introduced into the record related to impacts to scenic resources and recreational opportunities outside the analysis area.
Comment: I concur. The analysis area should look at impacts to the surrounding area that may not have been considered with a site specific analysis. Linear installations (powerlines) as well as large aerial installations (wind turbines) can have impacts well beyond the footprint of the installation. Permanent industrial installations will impact the visual and physical use of the area for generations.
- To avoid disruption of projects that are currently under review, specifying that amended standards will only be applicable to the review of an application for site certificate or requests for amendment filed on or after the effective date of the rules. **Comment: I disagree. Since applications can take years to review and approve, additional protected areas may have been added post application. All designations should be considered before approval of any site certificate.**

Thankyou for considering my comments.

Aric Johnson. La Grande Oregon.