

Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Hybrid Meeting
Webex/Pendleton OR

May 26-27, 2022



Opening Items:

- Call to Order
- Roll Call
- Announcements

Announcements:

- Reminder that this meeting is being held both live and via teleconference and webinar.
- Reminder to Council and to anyone addressing the Council to please remember to state your full name clearly, and do not use the speakerphone feature, as it will create feedback.
- You may sign up for email notices by clicking the link on the agenda or the Council webpage.
- You are also welcome to access the online mapping tool and any documents by visiting our website or through the computer near the entrance to the meeting room.

Announcements continued:

- Please silence your cell phones
- Please use the “Raise Your Hand” feature in Webex to speak during the public comment period, or press *3 to raise your hand if you are participating by telephone.
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.

Agenda Item A (Action Item & Information Item)

Consent Calendar

May 26, 2022

- April Council Meeting Minutes
- Council Secretary Report

Agenda Item B (Information Item and Hearing)

**Nolin Hills Wind Power Project, Public Hearing on Draft Proposed Order on Application
for Site Certificate (Hearing)**

May 26, 2022

**Kathleen Sloan, Senior Siting Analyst
Presiding Officer – Kate Triana, Administrative Law Judge, Office of Administrative
Hearings**

Nolin Hills Wind Power Project: Public Hearing Overview

1. Proposed Facility Overview: Department overview of siting process, proposed facility components and location.
2. Public Hearing Overview: Hearing Officer explains the legal requirements for providing comments on the record and will facilitate the hearing.
3. Public Hearing:
 - a. The applicant will be provided an opportunity to provide/present on anything in the Draft Proposed Order and/or may submit additional information/evidence to supplement the record.
 - b. Members of the public will be provided an opportunity to comment on the Draft Proposed Order and/or the application.
 - c. Council will be provided an opportunity to make comments about any concerns they have related to the Draft Proposed Order and/or the application.
 - d. The applicant will be provided an opportunity to respond to any comments; may request that the presiding officer extend the record.

Energy Facility Siting Council (EFSC) Review



- Consolidated review and oversight of most large-scale energy facilities and infrastructure in Oregon

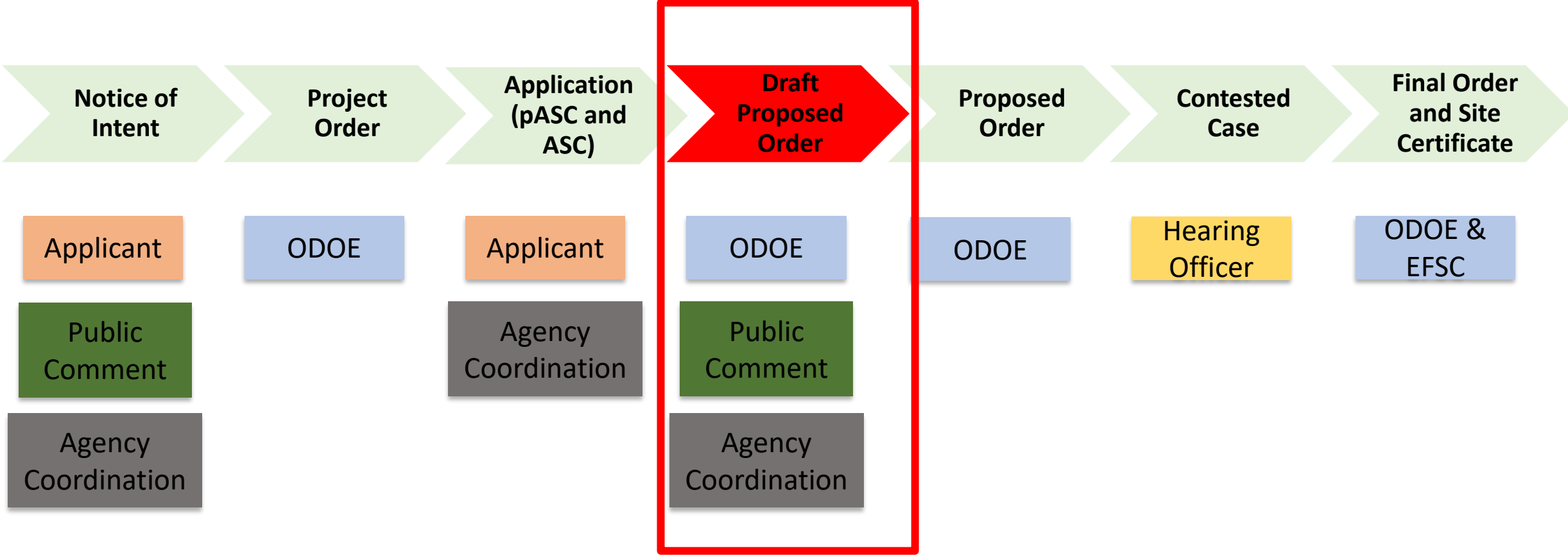


- 7 Members of EFSC
 - Governor appointed, Senate confirmed – Volunteers from around the State



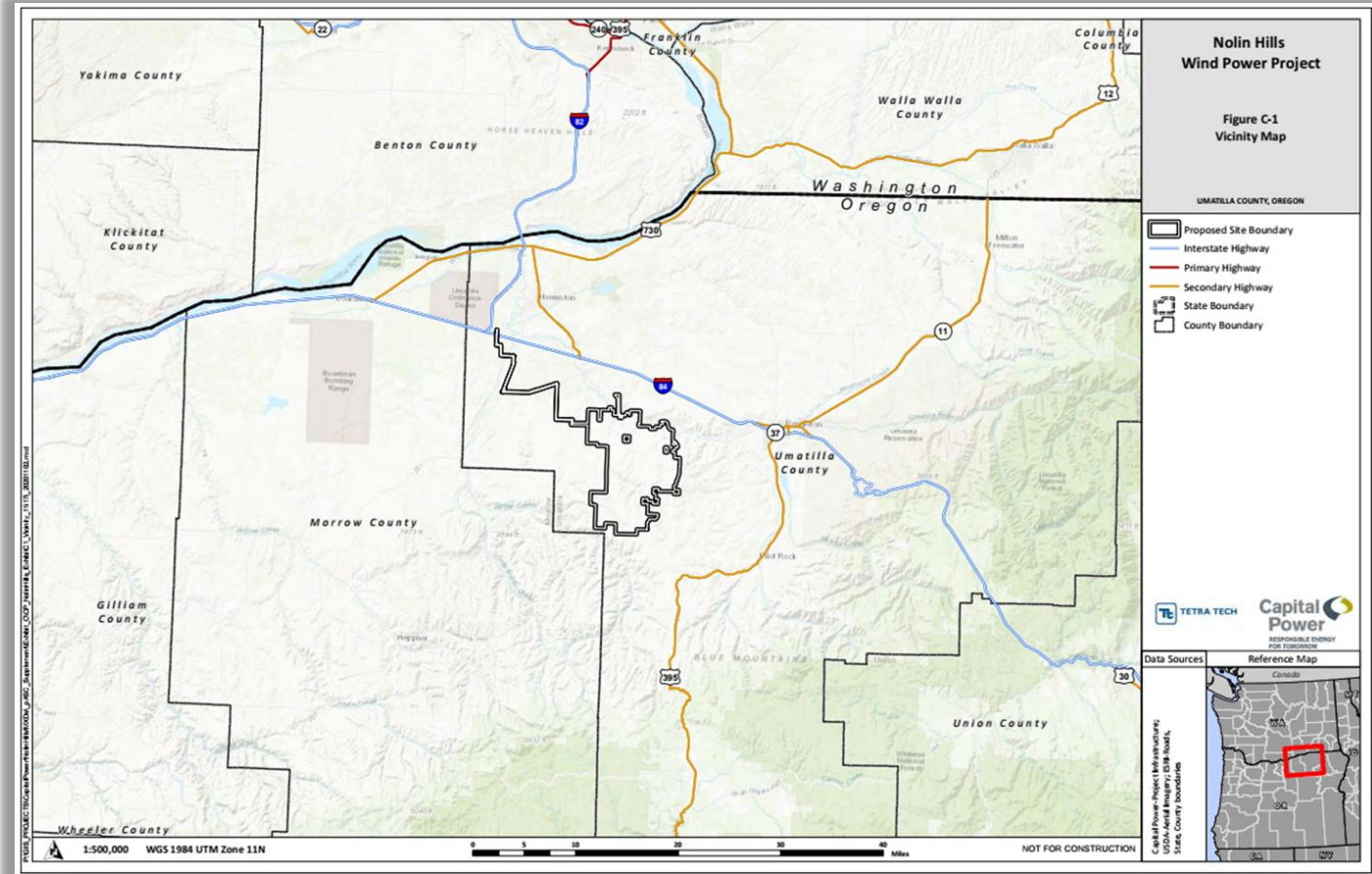
- ODOE's Siting Division is staff to EFSC

Energy Facility Siting Process



Nolin Hills Wind Power Project: Project Overview

- Applicant: Nolin Hills Wind, LLC, a subsidiary of Capital Power Corporation
- Proposed Facility: A 600-megawatt (MW) wind and solar energy facility. 48,196 acre Site Boundary.
- Related or supporting facilities include dispersed or centralized battery energy storage systems BESS and two mile 230-kV gen-tie transmission lines, etc.



Nolin Hills Wind Power Project: Procedural History

Milestone	Responsible Party	Date
Notice of Intent (NOI)	Applicant	Sept 11, 2017
Preliminary Application for Site Certificate (pASC) – Wind Only	Applicant	Feb 27, 2020
Revised Preliminary Application for Site Certificate (pASC) – Wind & Solar PV	Applicant	Nov 20, 2020
Application for Site Certificate (ASC)	Applicant	Jan 31, 2022
Draft Proposed Order (DPO)	ODOE	Apr 19, 2022
Public Hearing on the DPO	ODOE/EFSC	May 26, 2022
EFSC Review of DPO and Comments	EFSC	May 27, 2022*
Proposed Order and Notice of Contested Case	ODOE	TBD
Final Decision	EFSC	TBD

Public Participation at DPO Phase

- The issuance of the DPO notice initiates the opportunity for public comment on the proposed facility;
- Notice opens comment period and provides details on public hearing;
- The public may submit comments by:
 - Mail, email, public comment portal, hand-delivery, or fax during the comment period;
 - Providing oral or written comments at the in-person, webinar/call-in DPO public hearing.



Public Participation at DPO Phase (cont'd)

- Persons commenting on DPO during the comment timeframe are eligible to be considered for party status in the contested case proceeding;
 - The Council will not accept comments on the application or on the DPO after the close of the record on May 26, 2022;
- For consideration in the contested case, issues raised must be raised with sufficient specificity so that the Council, the Department, and the applicant understand the issue raised and are afforded an opportunity to respond to the issue;
- To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

Public Participation at DPO Phase (cont'd)

Effective Comments

- Referencing specific Council siting standards and OAR's. Providing specific information supporting whether or not a standard has been met;
- Stating supporting facts in comments & attaching reference materials;
- Referencing specific pages or sections of the application (ASC) or DPO.

Less Effective

- Only stating support or opposition to a proposed facility;
- Only providing a copy of a report without presenting any analysis or facts related to compliance with a standard;
- Raising issues outside of EFSC's jurisdiction;
- Making unsubstantiated statements.

Agenda Item B (Hearing)

Nolin Hills Wind Power Project, Public Hearing on the Draft Proposed Order

May 26,2022

**Presiding Officer – Kate Triana, Administrative Law Judge, Office of
Administrative Hearings
EFSC Appointed Hearing Officer**

Nolin Hills Wind Power Project: Public Hearing

A person who intends to raise any issue that may be the basis for a contested case must raise the issue:

- ➔ in person at the hearing or in a written comment submitted to the Department of Energy before the deadline stated in the notice of the public hearing (**Today, May 26, 2022**).
- ➔ with sufficient specificity to afford the Council, the Department of Energy and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.

OAR 345-015-0220 (5)(a) and (b)



Nolin Hills Wind Power Project: Public Hearing

Consideration of Issues in a Contested Case

To raise an issue in a contested case proceeding, the issue must be:

- within the jurisdiction of the Council;
- raised in person or in writing before the deadline stated in the notice of the public hearing; and
- raised with sufficient specificity to afford the Council, the Department of Energy, and the applicant an adequate opportunity to respond.

To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

Nolin Hills Wind Power Project: Public Hearing

Testimony

Prior to Testifying, state the following:

- Full name with spelling
- Name of organization or group if you are representing one
- Title if you are representing an organization or group
- Physical mail or email address if you wish to receive notice of the Proposed Order which includes a description of how to submit a petition to participate in the contested case

Please Note: If you do not wish to provide your mailing or email address in this format, you may email it to the Department at kathleen.sloan@energy.oregon.gov or call the following number and provide the information, including spelling, in a voicemail: 971-701-4913.



Nolin Hills Wind Power Project: Public Hearing

Applicant

The applicant may provide/present on anything in the Draft Proposed Order and/or may submit additional information/evidence to supplement the record.

Presiding Officer or Council Members may ask clarifying questions.

Nolin Hills Wind Power Project: Public Hearing

Public

Members of the public may comment on the Draft Proposed Order and/or the application.

Presiding Officer or Council Members may ask clarifying questions.

Nolin Hills Wind Power Project: Public Hearing

Council

Council may comment about any concerns they have related to the Draft Proposed Order and/or the application.

Nolin Hills Wind Power Project: Public Hearing

Applicant's Response to Comments

The applicant may respond to any comments by:

- Providing oral response
- Submitting additional information/evidence to supplement the record
- Requesting that the Presiding Officer extend the record to submit additional information/evidence to supplement the record

Nolin Hills Wind Power Project: Public Hearing

Close of the Public Hearing

Adjourn



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Agenda Item C (Action Item)

Port Westward Renewable Fuels Project, Council Review of Site Certificate Exemption Request

May 27, 2022

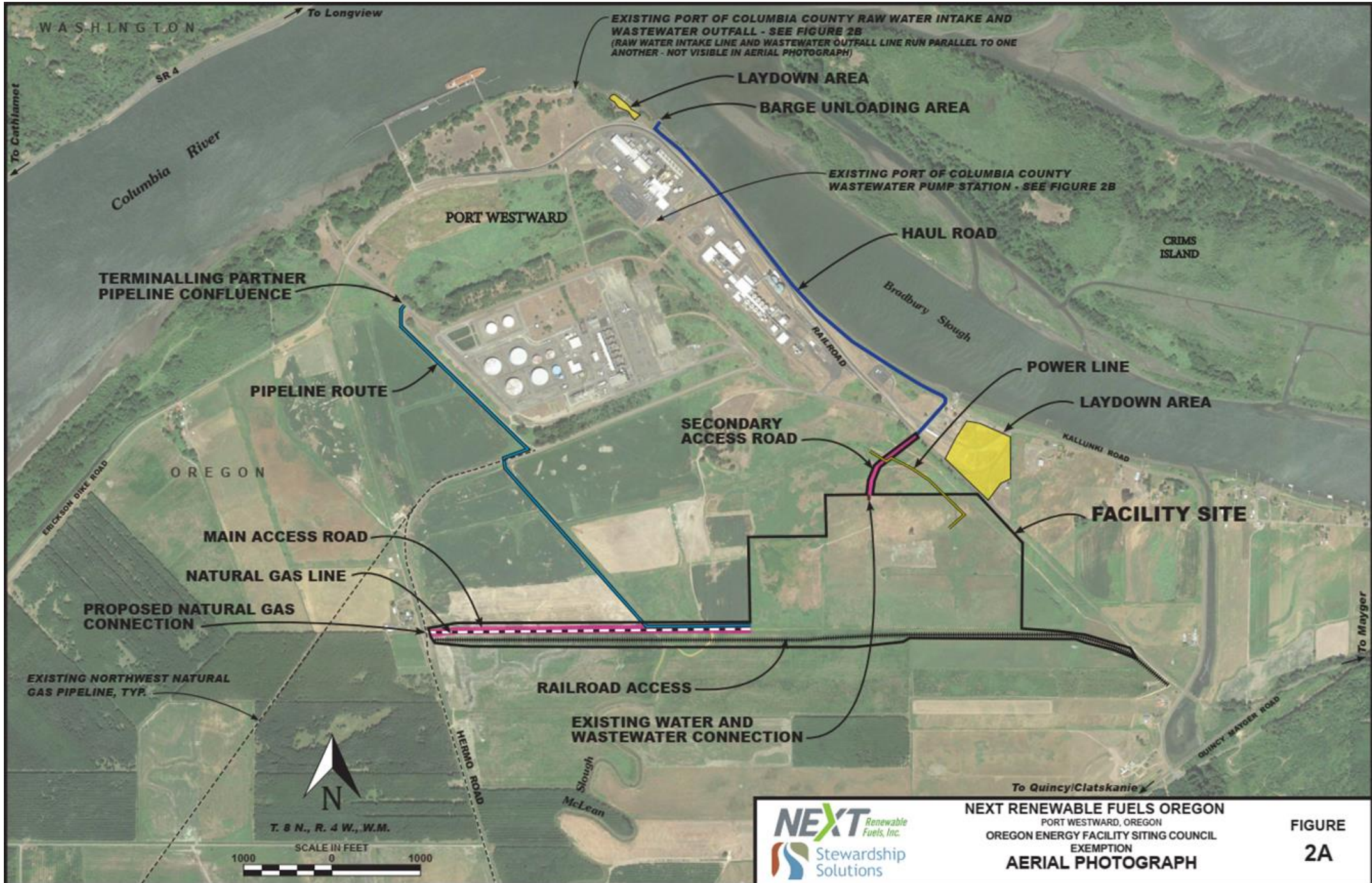
Wally Adams, Operations and Policy Analyst

Topics

- Project Description
- Procedural History
- Council's Authority and Applicable Regulatory Requirements
- Review of Public Comments Received
- Review of Exemption Request
- Council Deliberation and Decision

Project Description

- **Name:** Port Westward Renewable Fuels
- **Applicant:** NEXT Renewable Fuels LLC
- **Location:** Port Westward Industrial Park, Columbia County
- **Area:** 145.27 acres
 - 115.37 acres for the facility
 - 29.9 acres for the associated rail spur
- **Capacity:**
 - Input: Up to 50,000 barrels per day of biomass feedstock
 - Output: Up to 49,200 barrels per day of renewable fuels (diesel and naphtha)



Procedural History

Date	Action
November 9, 2020	NEXT submitted initial Request for Exemption to the Department.
December 7, 2020	The Department sent Request for Additional Information (RAI) to NEXT.
February 26, 2021	NEXT responded to RAI-1.
March 30, 2021	The Department sent an evaluation of the exemption request to NEXT for the purpose of clarifying where information was still required.
March 31, 2022	NEXT submitted an updated Request for Exemption
April 6, 2022	The Department issued a Notice of Filing to NEXT as required by OAR 345-015-0370(1).
April 20, 2022	The Department issued a draft of the Proposed Order and concurrently opened a 21 day written comment period.
May 11, 2022	Close of the 21 day written comment period.
May 13, 2022	The Department issued a Proposed Order and written comment summary for Council's consideration at the May EFSC meeting.
May 27, 2022	Council review of the Proposed Order and possible action.



Council's Authority

Per ORS 469.300(11)(a), an energy facility includes:

(G) A plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day.

At its maximum design and production capacity, the NEXT facility could produce renewable fuels that are capable of being burned to produce the equivalent of 287.6 billion British Thermal Units (BTU) per day. This meets the definition of an energy facility under ORS 469.300(11)(a)(G).

Applicable Regulatory Requirements

NEXT requests an exemption from the requirement to obtain a site certificate under ORS 469.320(2)(f), which states that a site certificate is not required for:

An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

- (A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;*
- (B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;*
- (C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section;*
- (D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge; and*
- (E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.*

Written Public Comments Received

- A written public comment period was open from 4/20/2022 – 5/11/2022.
- A total of 11 comments were received. Note: all comments are posted on the Siting Docket on ODOE's webpage, which can be accessed via this link: [Siting Docket · Customer Self-Service \(powerappsportals.us\)](https://powerappsportals.us/SitingDocket/CustomSelfService)
- Substantive comments focused on two issues:
 - 1) That the facility does not use exclusively biomass and therefore does not meet the requirements of ORS 469.320(2)(f)(A), and
 - 2) That the carbon intensity of the facility exceeds 118 lb CO₂ per MMBTU and does not meet the requirements of ORS 469.320(2)(f)(E).
- The Department will address each of these issues as we review the application vs. the statute.

ORS 469.320(2)(f)(A) - Feedstock

(A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

Questions:

- 1) Does the feedstock that NEXT intends to use meet the definition of biomass?
- 2) Does the statement “exclusively uses biomass... as the source of material for conversion” refer to only the primary feedstock, or to all ingredients used?

Primary Feedstock

Raw Oil Feedstock	Oil	Weight %
Soybean and Canola oils	Vegetable Oil	30
Distillers Corn Oil	Vegetable Oil	15
Used Cooking Oil	Vegetable Oil	15
Beef Tallow	Animal Fat	20
Choice White Grease (Pork Oil)	Animal Fat	10
Yellow Grease (Chicken Fats)	Animal Fat	10

Table excerpted from the application for exemption submitted by NEXT, page 5. "...example of the biomass mix that could be refined."

ORS 469.320(2)(f)(A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

Definition of Biomass from ORS Chapter 315

ORS 315.141(d) "Biomass" means organic matter that is available on a renewable or recurring basis and that is derived from:

- (A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;*
- (B) Wood material from hardwood timber described in ORS 321.267 (3);*
- (C) Agricultural residues;*
- (D) Offal and tallow from animal rendering;*
- (E) Food wastes collected as provided under ORS chapter 459 or 459A;*
- (F) Wood debris collected as provided under ORS chapter 459 or 459A;*
- (G) Wastewater solids; or*
- (H) Crops grown solely to be used for energy.*

What is the correct interpretation of the statute?

(A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

- 1) Considers only the primary feedstock which is being converted to a liquid fuel, or
- 2) Includes all ingredients or reactants that are used to produce the liquid fuel

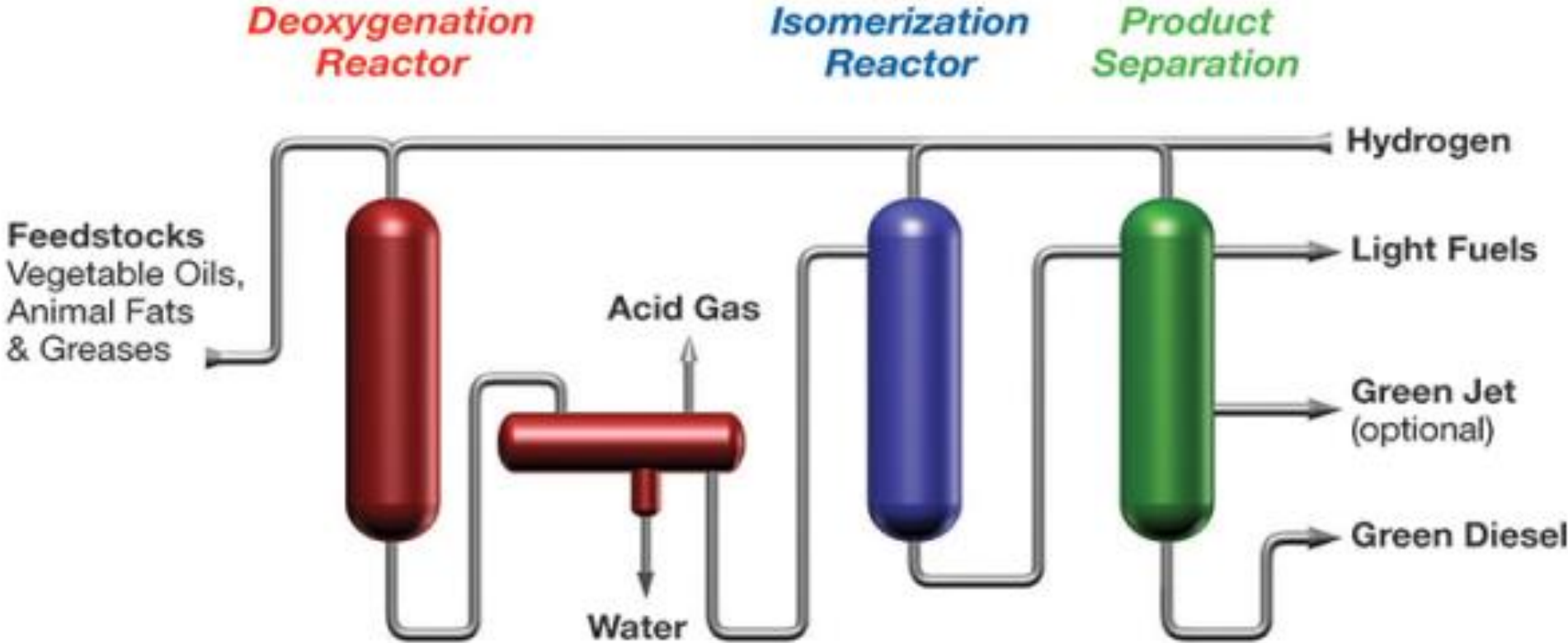
Renewable Diesel vs. Biodiesel

	Biodiesel	Renewable Diesel
Primary Ingredients	Oils and fats	Oils and fats
Secondary Ingredients	An alcohol, such as methanol or ethanol	Hydrogen
Production Process	Transesterification	Hydrotreating
Contains oxygen?	Yes	No, it's a hydrocarbon
Must be blended?	Yes, typically 5 – 20% with conventional diesel	No; drop-in replacement for conventional diesel
Stability	Can separate during storage; algae growth possible	Equivalent to conventional diesel

Past requests for exemption that have come before the Council were for biodiesel facilities. NEXT is the first renewable diesel facility to seek an exemption.

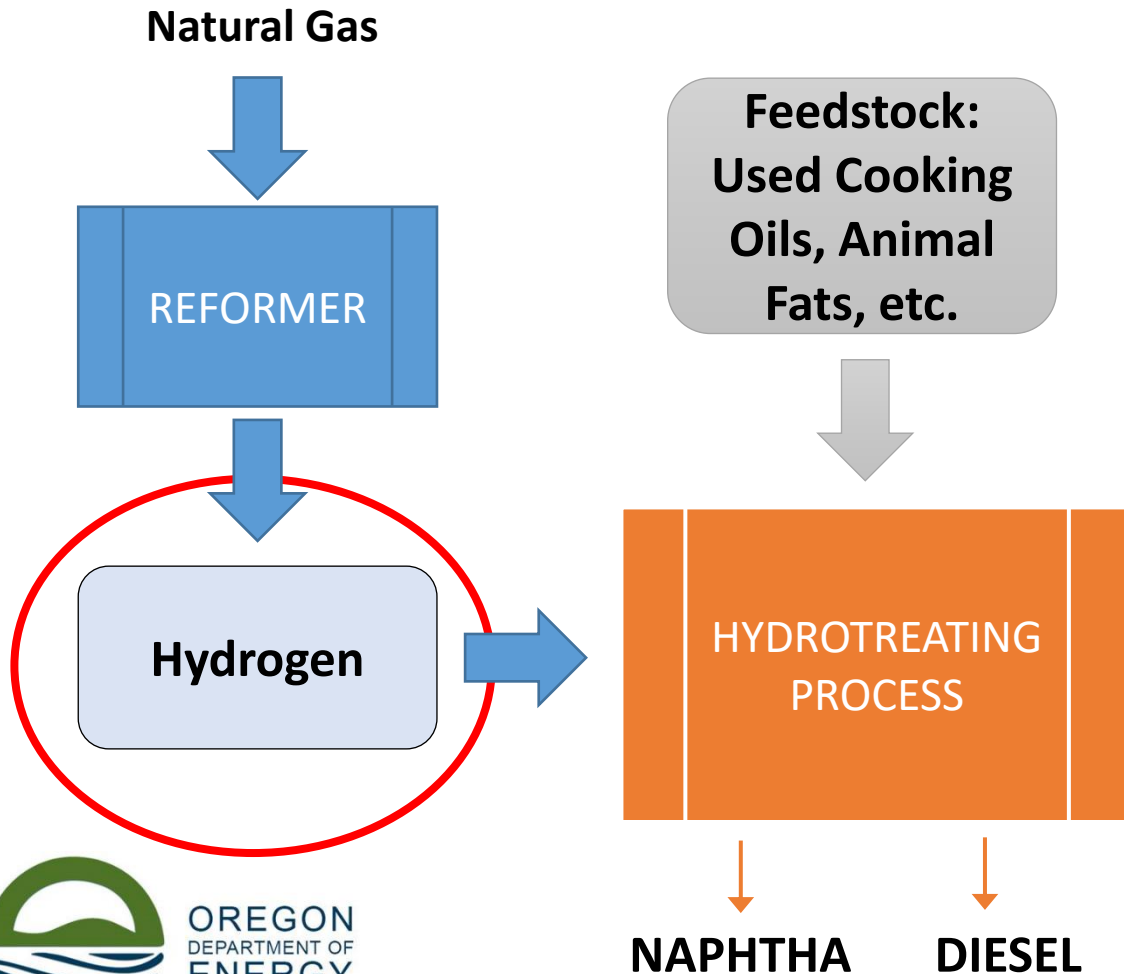
Renewable Fuels Manufacturing Process

Ecofining™ Process

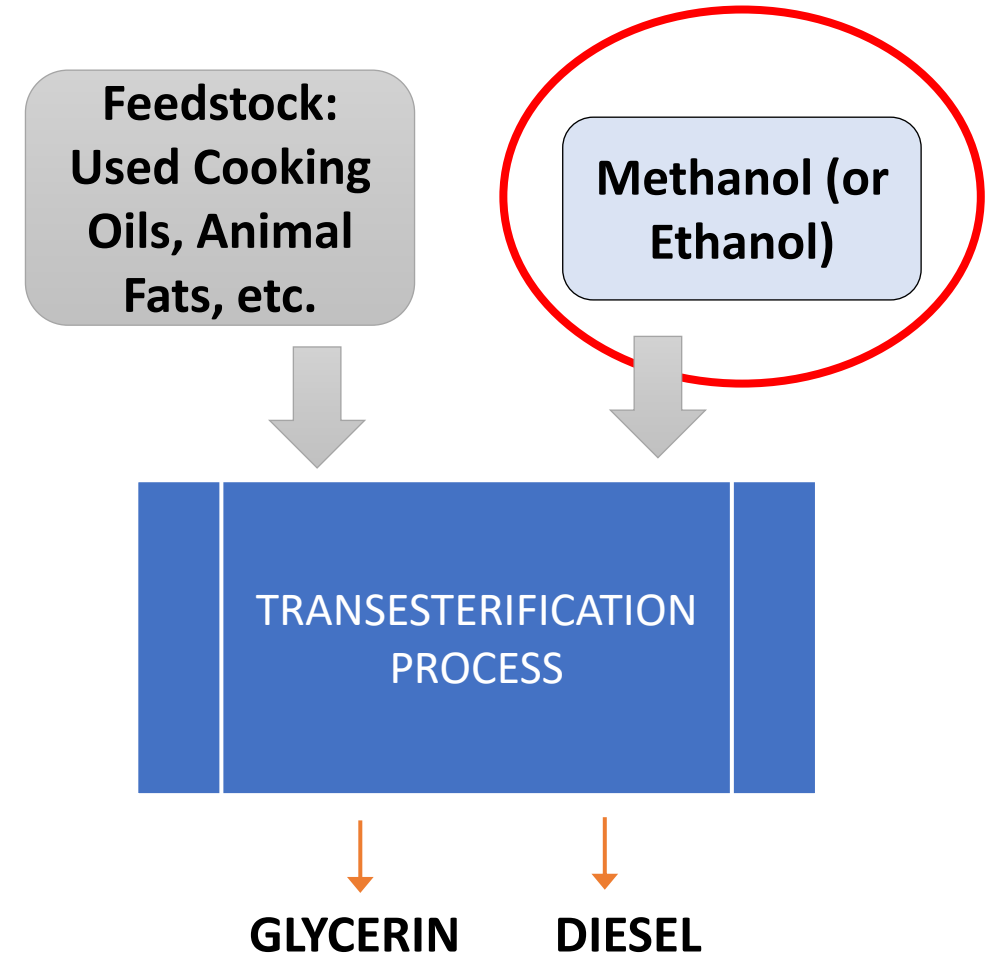


Inputs and Outputs

RENEWABLE DIESEL



BIODIESEL



Prior Council Decisions

- Two prior applications for exemption for biodiesel facilities: Altra Biodiesel and Morrow Bioenergy
- Council issued orders granting exemptions to both facilities on February 2, 2007
- From the orders granting the exemptions:
 - Altra: “The planned facility will convert domestically produced soy or canola oil, imported palm oil or other seed oil to produce biodiesel fuel.... The Council finds that criterion (A) is met.”
 - Morrow: “The planned facility will convert seed oil to produce biodiesel fuel... The Council finds that criterion (A) is met.”
- No mention of methanol, ethanol, or any other reactants used in the conversion process in the applications, orders, or other documents on file

Legislative History

- ORS 469.320(2)(f) was enacted in 1999 and amended in 2005 to include biodiesel and expand the definition of feedstocks
- No mention of ethanol, methanol, or hydrogen reactants
- Conversation focused exclusively on the primary feedstock
- Committee Administrator John Houser introduced the bill as follows:
“This bill would expand the current exemption to include biodiesel production facilities that would use waste cooking oil, oil seeds, or cellulosic biomass such as grass straw as their feedstock.”

ORS 469.320(2)(f)(A) - Feedstock

- Staff's Recommendation:
 - The Department's reading of the statute is that only the primary feedstock should be considered with respect to biomass.
 - The Department believes that this stance is supported by prior Council decisions and a review of the legislative history.
- Based on the description of feedstocks provided in the Request for Exemption, the NEXT facility will exclusively use biomass as the source of material for conversion to a liquid fuel. The Department recommends that Council find that the proposed plant would satisfy ORS 469.320(2)(f)(A).

ORS 469.320(2)(f)(B) – Local Land Use Approval

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

The local governing body is the Columbia County Board of Commissioners (the Board). On March 23, 2022, the Board issued final order 12-2022, granting a “Use Permitted Under Prescribed Conditions” for the NEXT facility, and final order 13-2022, granting a “Conditional Use Permit” for a rail branchline to serve the NEXT facility. These land use approvals provide confirmation of compliance with the applicable acknowledged comprehensive plan and land use regulations of the Columbia County Zoning Ordinance (CCZO).

The final orders issued by the Board, in writing and with notice to appropriate parties, constitute a final local land use decision.

ORS 469.320(2)(f)(B) – Local Land Use Approval

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

A portion of the rail branchline is proposed to be located on land that is designated as Primary Agricultural Use Zone (PA-80) land. LCDC rule OAR 660-012-0065(1) “...identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with Goals 3, 4, 11, and 14 without a goal exception.” The Board found that “The proposed rail development is a “rail branchline” for purposes of OAR 660-012-0065(3)(j) and is authorized as a transportation improvement...”

Orders 12-2022 and 13-2022 serve as local land use approval. As these permits are granted under Columbia County’s Comprehensive Plan, which is in turn acknowledged by the Land Conservation and Development Commission (LCDC), by extension the facility and rail branchline comply with any applicable statewide planning goals or LCDC rules as determined in the county’s assessment.

Port Westward Expansion

- On September 22, 2021, Columbia County approved an application to rezone 837 acres at Port Westward from Primary Agriculture to Resource Industrial Planned Development.
- On May 9, 2022, the Oregon Land Use Board of Appeals (LUBA) remanded the decision back to the County.
- The NEXT facility falls within the existing RIPD zone.
- The rail spur which would service the next facility overlaps with the proposed port expansion; however, the Conditional Use Permit issued by the County for the rail spur is not dependent on the rezoning for the port expansion.
- Conclusion: the final land use decisions issued by the County are not impacted by the LUBA decision.

ORS 469.320(2)(f)(C) – Transmission/Pipelines

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate...

Under ORS 469.300(11)(a)(C), EFSC jurisdictional transmission lines include lines rated 230 kV or greater in voltage, extending 10 or miles and crossing two or more jurisdictions.

Plant electrical load = 40 megawatts (MW) per day, served via a proposed onsite substation. The substation would require construction and operation of an 1,100-foot service line, extending from the substation to an existing Clatskanie Public Utility District power pole.

The proposed transmission line would not constitute an energy facility under ORS 469.300(11)(a)(C) because it would extend less than 10 miles in length.

ORS 469.320(2)(f)(C) – Transmission/Pipelines

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate...

Under ORS 469.300(11)(a)(E), EFSC jurisdictional pipelines include those 6 inches or greater in diameter, extending 5 miles or more for transport of crude oil or natural gas and those 16 inches or greater in diameter, extending 5 miles or more for transport of natural gas or geothermal energy.

Boilers, heaters and other process equipment would operate using natural gas, resulting in overall fuel needs of 14.2 million standard cubic feet per day (15,400 million BTU/day). Onsite natural gas needs would be delivered via a new 8-inch natural gas pipeline (interconnecting pipeline), extending approximately 3,800-feet (approx. 0.72 miles) that would interconnect to the existing Northwest Natural Gas pipeline.

Because the interconnecting pipeline would be less than 5 miles in length, it would not constitute an energy facility under ORS 469.300(11)(a)(E).

ORS 469.320(2)(f)(D) – Bulk Shipments

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge;

NEXT represents that over 95 percent of the finished products would be transported via ship or barge at the existing Port Westward dock, where approximately 5 ships per month, or 60 ships per year, would be used to load product using a third-party logistics provider with priority dock access under a long-term lease agreement at the Port. A small portion of the fuel, less than 5 percent, may be transported via rail or truck for local consumption. NEXT provided copies of the relevant dock agreements and amendments to the Department.

ORS 469.320(2)(f)(E) – Carbon Intensity

(E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.

- Value reported by NEXT: 115.9 lb CO₂/MMBtu
 - NEXT also provided a calculation as part of their response to a RAI by the Department.
- Values reported by Northwest Natural to the Oregon Department of Environmental Quality have fallen in the range of 117.0 – 117.2 over the last 10 years.
 - Note: From emissions factors when converted to lb CO₂/MMBtu
- U.S. Environmental Protection Agency uses a value of 117 lb CO₂/MMBtu for natural gas.
- The same 117 lb CO₂/MMBtu emissions factor for natural gas is also found in other siting statute (ORS 469.503(2)(e)(J)).

ORS 469.320(2)(f)(E) – Carbon Intensity

(E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.

Several of the public comments contend that the facility will exceed the 118 lbs of CO₂ per MMBTU limit based on the lifecycle emissions associated with the natural gas used. There are two flaws with those arguments:

- 1) The comments focus on methane leaks at various points in the lifecycle of natural gas. The Council's standard explicitly refers to carbon dioxide and not methane.
- 2) The Council's standard focuses on the point of conversion, which is consistent with other Council standards related to CO₂.

Staff Recommendation

- Although not required for the exemption, Columbia County's requirements outlined in Final Orders 12-2022 and 13-2022 still apply and must be met.
- The Department recommends that the Council find that the proposed Renewable Fuels Production facility, as described in the exemption request submitted by NEXT Renewable Fuels Oregon LLC on March 31, 2022, is exempt from its jurisdiction pursuant to ORS 469.320(2)(f).

Council Decision on the Request for Exemption

Approve (staff recommendation)

Approve Proposed Order
as Final Order

Modify

Approve Proposed Order,
with modifications, as
Final Order

Reject

Reject Proposed Order
and Issue Final Order
Denying Request for
Exemption

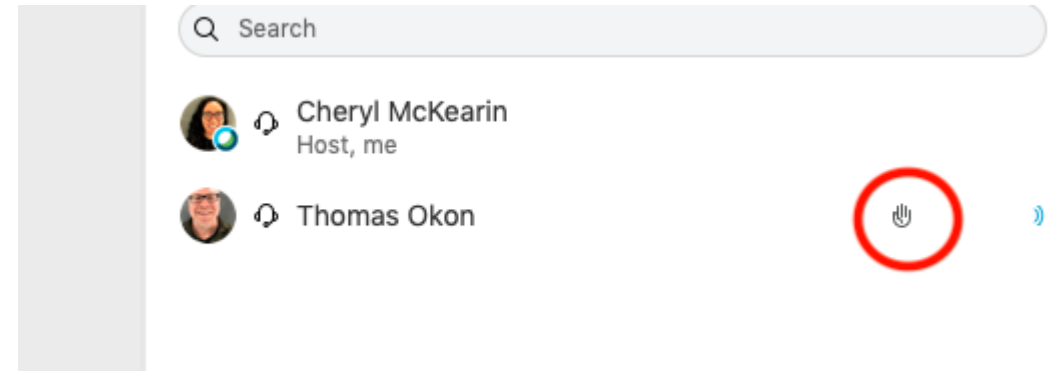
Council Deliberation

Agenda Item D

PUBLIC COMMENT

Phone Commenters: Press *3 to raise your hand to make comment, and *3 to lower your hand after you've made your comment.

Webinar Commenters: Open the Participant list, hover over your name and click on the "Raise Your Hand icon".



How to Raise Your Hand in Webex:

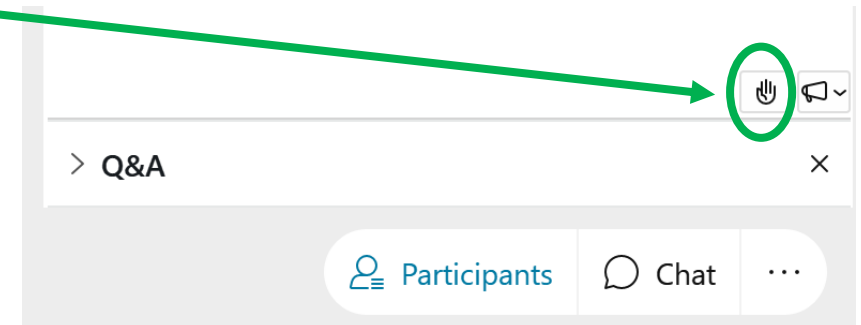
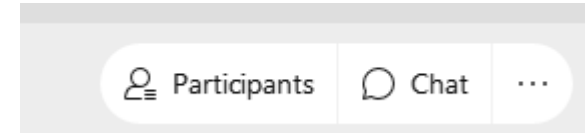
Webinar Participants

The bottom right of the main window is a set of icons:

Click on “Participants”

The bottom right of the participant window is a hand icon, click on the hand:

Clicking on it again will lower your hand.



Phone Participants

Press *3 on your telephone keypad to raise your hand.

Press *3 again on your telephone keypad to lower your hand.

BREAK

Agenda Item E (Action Item)

Protected Areas, Scenic Resources, and Recreation Standards Rulemaking

May 27, 2022

**Christopher M. Clark, ODOE Senior Siting Analyst and EFSC Rules
Coordinator**

Presentation Overview

- Background and Procedural History
- Historic Properties of Religious and Cultural Significance to Indian Tribes
- Overview of Recommendations
- Council Consideration of Proposed Rules

Background

- **Scope:** Address issues related to the Protected Areas, Scenic Resources, and Recreation Standards and associated rules.
- **Objectives:**
 - Ensure that the standards clearly identify the resources and values they are intended to protect.
 - Ensure that the standards are consistent with ORS 469.310.
 - Improve efficiency and effectiveness of Council's review processes and procedures by resolving ambiguity, lack of clarity, and inconsistency in rule.

Procedural History

Item	Date
Council initiates rulemaking	October 22, 2020
Staff solicits written comments	November 6, 2020
Council review of preliminary feedback	April 23, 2021
	July 28, 2021
Staff Conducts Rulemaking Workshops	August 18, 2021
	October 14, 2021
Council provides feedback on preliminary analysis and recommendations	February 25, 2022
Staff solicits additional feedback on revised draft rules	March 7, 2022
Council considers proposed rules	April 22, 2022
	May 27, 2022

Rulemaking Process



Council Standards

General Standard of Review

Organizational Expertise

Structural Standard

Soil Protection

Retirement and
Financial Assurance

Fish and Wildlife Habitat

Threatened and
Endangered Species

Land Use

Protected Areas

Scenic Resources

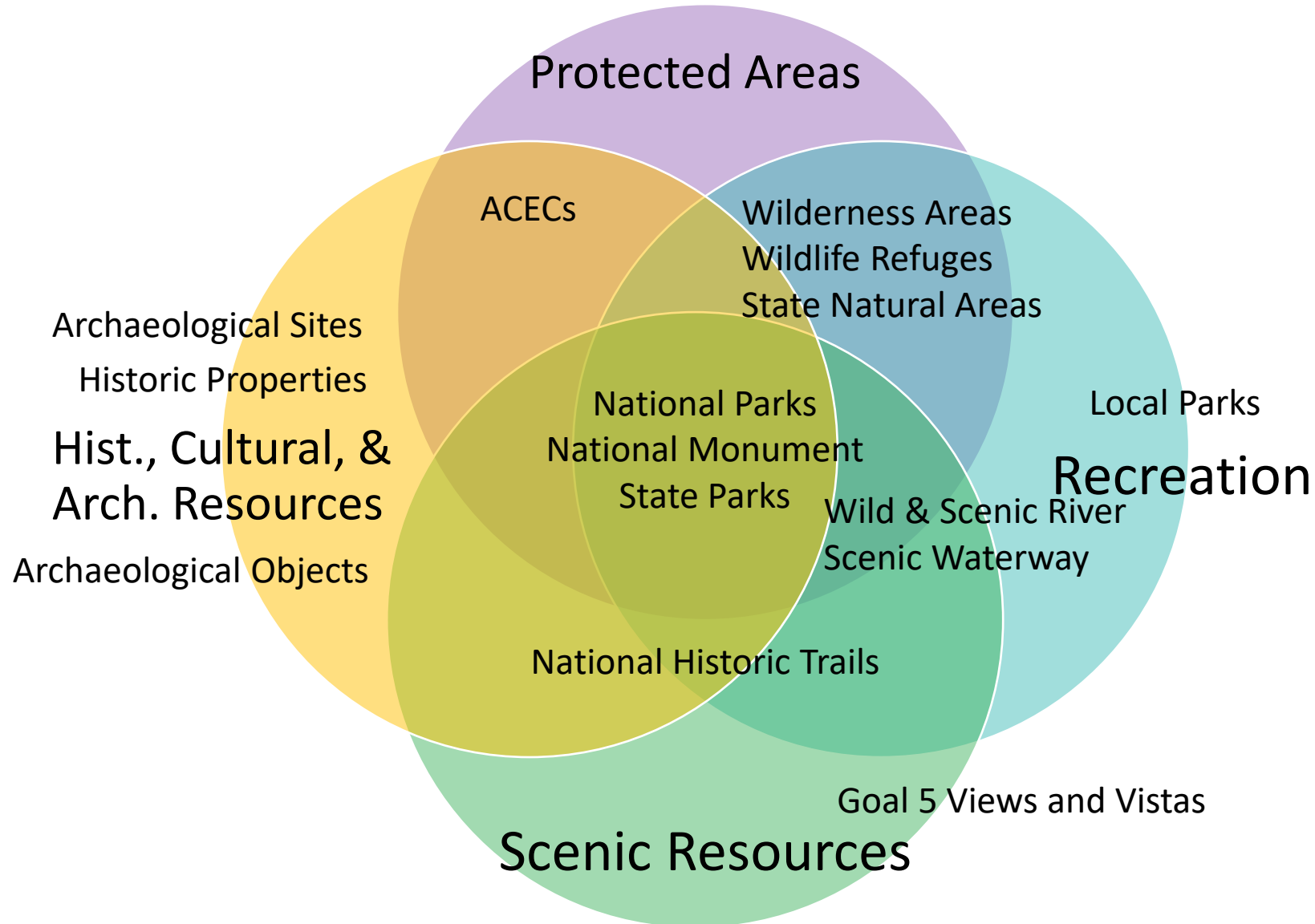
Recreation

Historic, Cultural and
Archaeological Resources

Public Services

Waste Minimization

Scope of Existing Standards



Hist., Cultural, And Arch. Resources Standard

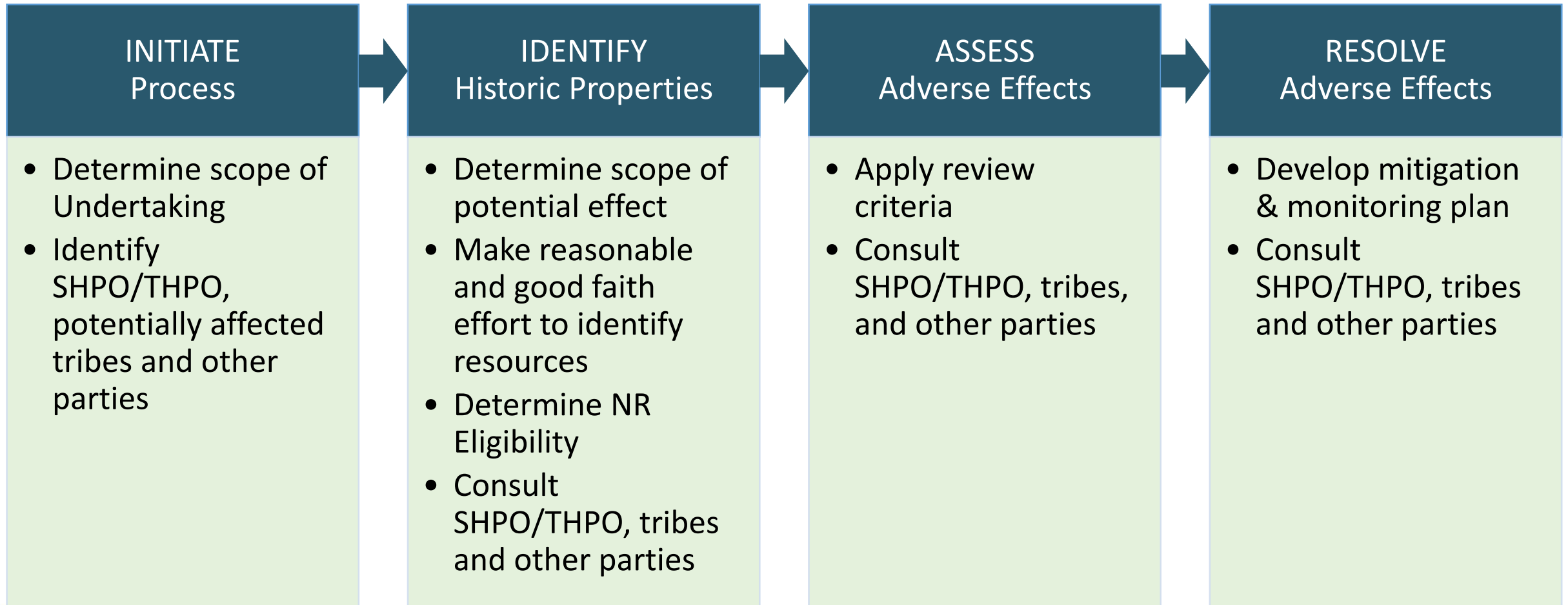
OAR 345-022-0090

- Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:
 - Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;
 - For a facility on private land, archaeological objects or sites
 - For a facility on public land, archaeological sites
- The Council may issue a site certificate for special criteria facilities and renewable energy facilities without making the findings described above, but may impose conditions.

Historic Properties of Religious and Cultural Significance to Indian Tribes

- The National Historic Preservation Act (NHPA) specifies that Historic Properties of Religious and Cultural Significance to Indian Tribes (HPRCSIT) may be eligible for inclusion on the National Register of Historic Places.
- (Federal) Executive Order 13007 separately requires federal agencies to accommodate access to and ceremonial use of Indian sacred sites on federal lands
- Section 106 of the NHPA requires federal agencies to consult with tribes when taking an action or making a decision that could affect a HPRCSIT, regardless of whether it is on federal land or not.

Section 106 Process



Evaluating Eligibility

- Must be a building, site, district, structure, or object
- Must meet one of the National Register Criteria for Evaluation by:
 - Being associated with an important historic context (including culture)
 - Retaining historic integrity of features necessary to convey its significance
- Must possess significance in American historic, architecture, archeology, engineering, or culture when evaluated within local, state, or national historic context
- Properties may have significance if they are associated with events, or series of events, significant to the cultural traditions of an Indian tribe.
- Properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization may be eligible for the National Register of Historic Places.

Oregon Sites Of Archaeological Significance

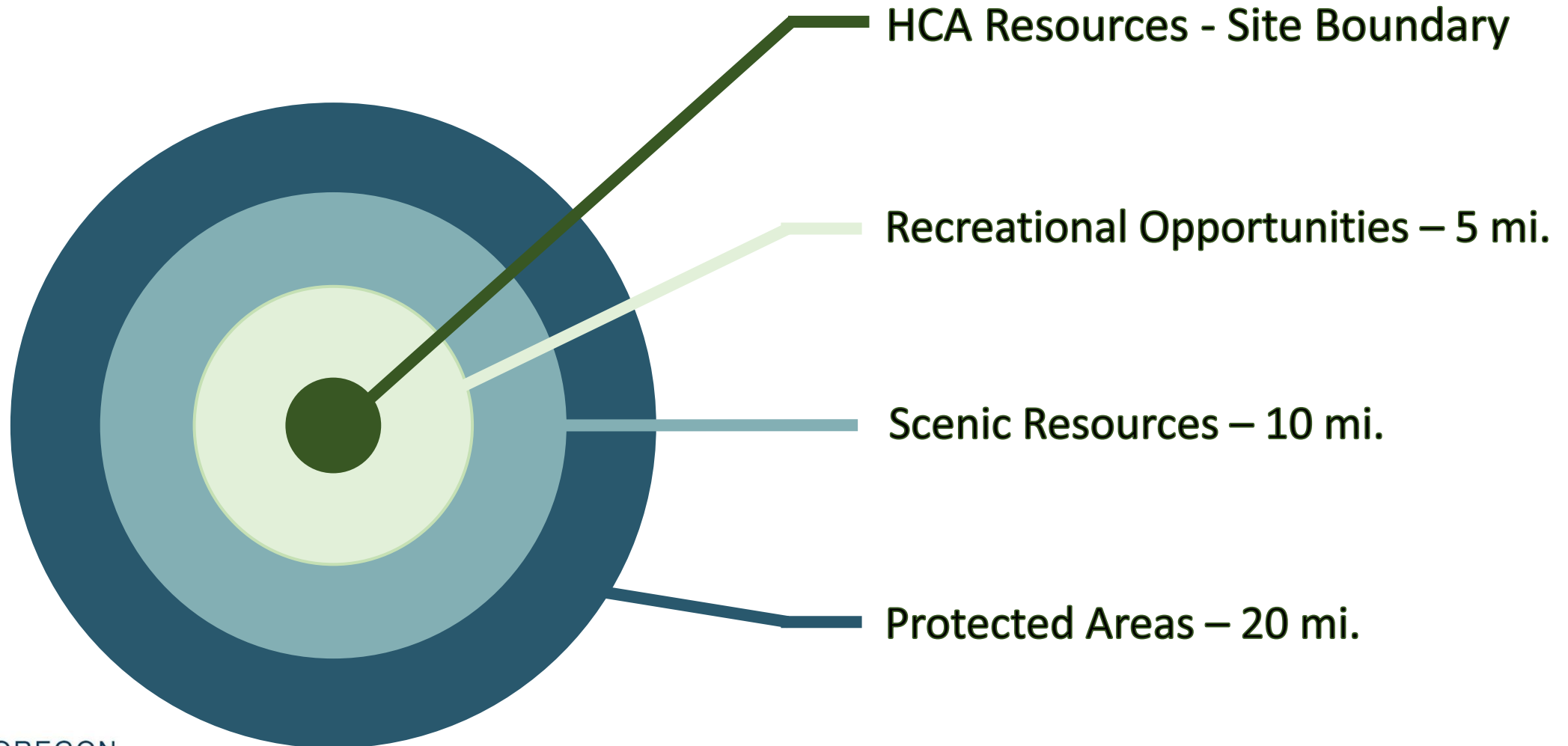
ORS 358.905(1)(b)

“Site of archaeological significance” means:

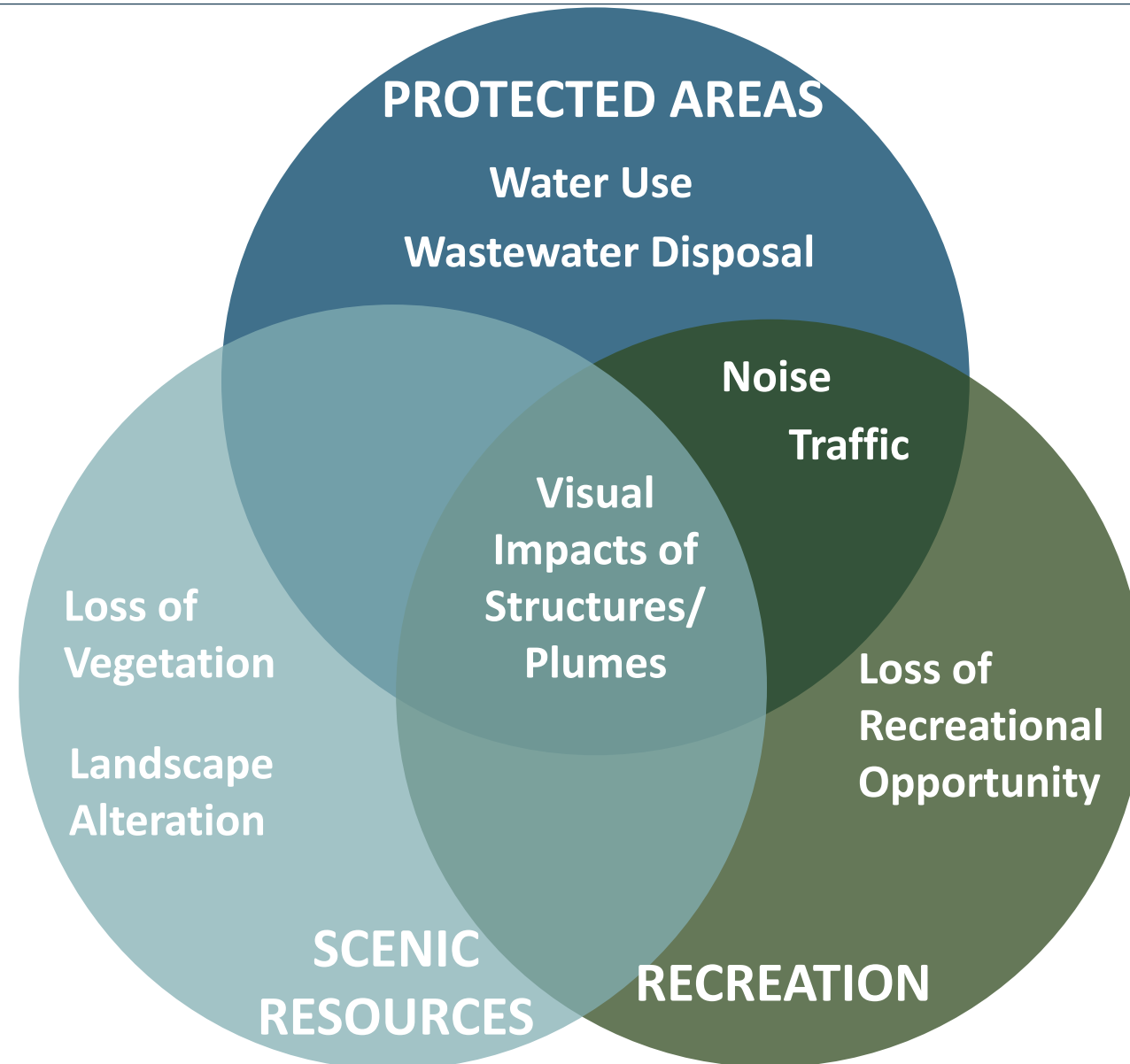
(A) Any archaeological site on, or eligible for inclusion on, the National Register of Historic Places as determined in writing by the State Historic Preservation Officer; or

(B) Any archaeological site that has been determined significant in writing by an Indian tribe.

Current Study Areas



Required Impact Analyses



Options for Expanding Protected Areas Standard

- Staff does not recommend including all properties included on or eligible for listing on the national register as protected areas.
- If Council wishes to include historic properties of traditional religious and cultural significance to an Indian tribes as “protected areas”, it could add new section for:
 - Properties of traditional religious and cultural significance to an Indian tribe:
 - Listed, or determined by the State Historic Preservation Officer to be eligible for inclusion on, the National Register of Historic Places; or
 - Any archaeological site that has been determined significant in writing by an Indian tribe.

Recommendations for Future Rulemaking

- Review Council rules for consistency with state policies under ORS 358.910 and 469A.405.
- Align tribal coordination process to better align with Section 106 process
- Provide opportunity for Government-to-Government coordination/consultation on siting projects
- Amend Historic, Cultural, and Archaeological Resources Standard to protect all “sites of archaeological significance” as defined under ORS 358.905.

Options for Addressing HPRCSITs in Current Rulemaking

Option 1

Expand Protected Areas Standard to include new section for HPRCSITs

Option 2

Do not add new section and continue to rely on Historic, Cultural and Archaeological Resources Standard.

Summary of Issues & Recommendations

#	Description	Staff Recommendation
1	Rules do not require the department or applicant to give notice to or request comment from the manager of a protected area that may be affected by a proposed facility.	Require public notice to be sent to Protected Area Managers. Amend NOI and ASC rules to require Applicant to identify protected area managers.
2	The Scenic Resources and Recreation Standards 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.	Amend the Recreation and Scenic Resources Standards to allow the Council to consider evidence related to resources outside the analysis area.

Summary of Issues & Recommendations

#	Description	Staff Recommendation
2.1*	Some stakeholders recommend that the study areas for impacts to Protected Areas, Recreation, and Scenic Resources are too large, especially for renewable energy facilities.	Make no changes at this time.
2.2*	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.	Make no changes at this time

*Issue raised in whole or part by stakeholders

Summary of Issues & Recommendations

	Description	Staff Recommendation
3	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.	Remove the effective date for designations, require evaluation of impacts to protected areas that are designated before the complete application is filed.
4	The Protected Areas standard contains a list of designation categories and specific protected areas that may be incomplete or out of date.	Update and simplify the list and remove specific examples to reduce the need for future rulemaking.

Summary of Issues & Recommendations

	Description	Staff Recommendation
5	The Protected Areas standard does not list Outstanding Resource Waters as Protected Areas.	Make no changes
6	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.	Amend rule to clarify OAR 345-022-0040(2)
7	The Scenic Resources standard does not specify that resources and values identified as significant or important in state land management plans are protected.	Amend standard to require assessment of visual impacts to State Scenic Resources.

Summary of Issues & Recommendations

	Description	Staff Recommendation
8*	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.	Specify that amended standards will only apply to applications or requests for amendment filed on or after the effective date of the rules.
9*	More specificity may be needed in how the Council evaluates visual impacts.	Consider in future rulemaking
10*	A stakeholder recommended the Council clarify the criteria for identifying important recreational opportunities.	Make no changes at this time

*Issue raised in whole or part by stakeholders

Fiscal and Economic Impacts

- Because the proposed rules would only apply to applications submitted on or after the effective date of rules, no direct fiscal impacts or costs of compliance are expected.
- Some indirect impacts could result from protection of additional designated areas, scenic resources, and recreational opportunities.
- No small businesses are likely to be affected by the proposed rules

Staff Recommendations

- Approve the proposed rules and authorize staff to issue a Notice of Proposed Rulemaking as provided in Attachment 1, with or without changes to address HPRCSITs.
- Schedule a public comment period through July 21, 2022, and a rulemaking hearing for June 23, 2022.
- Consider additional changes related to Historic, Cultural and Archaeological Resources in future rulemaking.

Next Steps

Item	Date
Council approves proposed rules and authorizes NOPR	May 27, 2022
Staff issues NOPR	June 1, 2022
Rulemaking hearing	June 23, 2022
Last day for public comment	July 21, 2022
Council consideration of permanent rules	July 22, 2022

Council Decision on Proposed Rules

Option 1

Authorize staff to issue NOPR with proposed rules presented in Attachment 1

Option 2

Authorize staff to issue NOPR with modifications to proposed rule presented in Attachment 1

Option 3

Reject proposed rules and deny authorization to issue NOPR.

Council Deliberation

Agenda Item F (Information Item)

**Update on Oregon Public Utility Commission's
Certificate of Public Convenience and Necessity Rulemaking**

May 27, 2022

Garrett Martin, Public Utility Commission Policy Advisor

AR 626

RULEMAKING RELATED TO CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY (CPCN)

Presentation to Energy Facility Siting
Council

May 27, 2022

Agenda

- CPCN Background
- Why is the PUC revising CPCN rules?
- Areas of Revision
- Land Use Compliance and Compatibility

Public Utility Commission (PUC) Roles

- Primary role is as an economic regulator
 - Electric – 3 investor-owned utilities
 - Natural Gas – 3 investor-owned utilities
 - Telecom – About 370 companies
 - Water – About 80 small water utilities
- Quasi-judicial executive branch agency
- Responsible for electric and natural gas system safety
 - ORS 758.015 – Empowers the PUC to issue Certificates of Public Convenience and Necessity (CPCNs)



Basics of a CPCN

- Required when an electric utility is seeking to construct a transmission line that will necessitate a condemnation of land or an interest therein
- Must demonstrate to the Public Utility Commission (PUC)
 - Necessity
 - Safety
 - Practicability
 - Justification in the public interest

- PUC is required to hold a public hearing to evaluate the utility petition
- PUC shall conduct an investigation to determine if the proposed line meets the four criteria
- PUC Staff may request additional information as needed
- A contested cases if petitioner is also seeking EFSC approval
- Decisions may be appealed to Supreme Court

The CPCN Process

Revising CPCN Rules

- Existing rules lack specificity
 - Utilities uncertain about when to submit a petition and what is needed for it to be complete
 - PUC Staff need clear guidance on the types of information they can ask for as part of investigation

- Being revised to include:
 - More narrative detail about the project
 - More context about how the proposed line fits into the broader electric system
 - Details of land ownership along the proposed route, including land that will require condemnation
 - Greater detail about incurred/forecasted project costs as well as bill impacts
 - More information on alternative solutions
 - Electrical studies justifying the project
 - Details about safety compliance
 - Assessment of the costs and benefits of the project to ratepayers and Oregonians

OAR 860-025-0030

- Also creating a waiver process to clarify when a utility is able to initiate a CPCN without having already secured all necessary local land use permits or an EFSC certificate

New Rules

- OAR 860-025-0035
 - Clarifies criteria to be used by PUC to determine if a project is necessary, safe, practicable, and justified as in the public interest
 - Gives due consideration to related regulatory approvals and permitting
 - CPCN is valid for 15 years, 10 without construction
- OAR 860-025-0040
 - Outlines land use determination options

Land Use – Current Rules

- If subject to local land use permitting, current rules require:
 - Local Land Use Permits, or;
 - Letters stating no permit required, or;
 - Equivalent of above, or
 - PUC goal compliance findings.

Level Playing Field – Any of the above may provide necessary PUC land use determinations for a CPCN.



CPCN Petition Filing Requirements

- Existing rules
 - No timing direction
 - Projects subject to EFSC must have certificate before PUC can make a CPCN determination
- PUC's original proposal
 - All land use decisions must be completed prior to petition filing
- Commission Revised Proposal
 - Waiver process to allow CPCN process to begin before final land use decisions are complete.



Six Scenarios

All land use
documentation
included
(no waiver needed)

- 1. Local land use permits, letters or equivalent
- 2. EFSC jurisdiction - site certificate issued

Concurrent processes
(waiver required)

- 3. Local LU permits/letters/equivalent in process
- 4. EFSC jurisdiction – site certificate pending

Documentation cannot
be obtained
(waiver required and
request for PUC to
make land use findings)

- 5. Petitioner lacks interest in land necessary to submit local land use application(s).
- 6. Other circumstances

Benefits and Risks of Allowing Waivers



After discussions with stakeholders, consensus developed CPCN petitions should be allowed before all land use determinations have been made, provided waiver criteria is met

Benefits

- Allows CPCN review process to begin sooner
- Allows for efficient administration of project permitting by utility
- Recognizes circumstances where local permits may not be possible without a CPCN

Risks

- CPCN process may need to be suspended pending local gov't or EFSC determinations
- CPCN may not be considered because of failure to secure necessary approvals
- Petition may have to be resubmit if project path is changed

Land Use Compatibility Statements (LUCS)

- Currently being considered to address local gov't concerns with PUC making land use determinations
- Would allow local government to weigh in on whether project is consistent with comprehensive plans and land use regulations



Questions?



Lunch Break



Agenda Item G (Action Item)

**Wildfire Prevention and Response Rulemaking Consideration of
Proposed Rules**

May 27, 2022

Christopher M. Clark, Senior Siting Analyst and EFSC Rules Coordinator

Presentation Overview

- Background and Procedural History
- Overview of Recommendations
- Rulemaking Timeline
- Council Consideration of Proposed Rules

Wildfire Policy In Oregon

- The Oregon Public Utility Commission (PUC) opened a rulemaking related to wildfire risk mitigation and planning in August 2020.
- SB 762 (2021) established new standards for electric utility Wildfire Protection Plans, statewide risk analysis, and wildfire mitigation efforts.
- The PUC adopted permanent rules for Wildfire Protection Plans in December 2021. Supplemental rulemaking is ongoing.
- Oregon's three investor-owned electric utilities submitted 2022 Wildfire Protection Plans to PUC in December 2022. All have been Approved by the PUC.

Procedural History

Item	Date
Council initiates rulemaking	October 22, 2021
Staff solicits written comments from Tribes	January 4, 2022
Staff Conducts Rulemaking Workshop	January 27, 2022
Council considers proposed rules	May 27, 2022

Need for Rulemaking

- Climate change is increasing the frequency and severity of wildfires in Oregon and across the Western United States.
- Several catastrophic fires, including the 2018 Paradise Fire in California, were found to have been caused by electric infrastructure.
- Documented cases of wildfire at or caused by renewable energy generation facilities or associated transmission lines have raised concerns about fire safety.



Photo Credit: North Gilliam Fire Protection District.
Source: <https://katu.com/news/local/wind-turbine-sparks-fire-in-arlington>

Current EFSC Regulatory Approach

- To issue a site certificate the Council must find:
 - “* * * the applicant has demonstrated the ability to design, construct and operate the proposed facility * * * in a manner that protects public health and safety * * *” OAR 345-022-0010(1)
 - “* * * the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers * * * to provide * * * fire protection * * *” OAR 345-022-0110(1).

Authority for Council Standards

- The Council is responsible for ensuring that the siting, construction and operation of energy facilities is consistent with protection of the public health and safety and the environment. ORS 469.310.
- The Council has the authority to adopt standards for the siting, construction, operation and retirement of facilities under ORS 469.501.



2020-21 Wildfire Perimeters

Oregon Wildfire Risk Explorer: <https://oregonexplorer.info>

Rulemaking Objectives

- Minimize the risk of a facility subject to the Council's jurisdiction causing a wildfire
- Ensure that sufficient programs and procedures are in place to ensure the protection of public health and safety in the event that a wildfire does occur at an energy facility site, regardless of the source of ignition.
- Maintain consistency with the wildfire mitigation rules adopted by the PUC to the extent possible.

PUC Regulatory Approach

- ORS 757.963 requires electric utilities to develop and operate in compliance with Wildfire Protection Plans. For consistency, the Department has recommended that the Council follow a similar approach.
- New laws and rules apply to electric utilities and cover generating and transmission resources. 2022 Wildfire Protection Plans focus on transmission and distribution system.
- PUC rules allow utilities to identify methods and data sources for risk analysis, but require updates to incorporate the most updated data available from reputable sources.

Recommendations for Council Standard

- Adopt a new standard for Wildfire Prevention and Risk Mitigation that requires the following findings:
 - That the applicant has adequately characterized wildfire risk within the analysis area using current data from reputable sources, based on proposed PUC criteria.
 - That the facility is not likely to result in a significant increase in wildfire risk, taking into account both the probability and consequences of a wildfire at the site.
 - If the analysis area includes areas subject to heightened risk of wildfire, or high-fire consequence areas, that the proposed facility will operate in compliance with a Wildfire Mitigation Plan approved by the Council, based on PUC criteria.

Issue 1: Applicability of New Standard

Issue: Should new standard apply to the review of all new and pending applications and requests for amendment, or just newly submitted applications and requests?

Alternatives:1 (Recommended): Apply new standard all decisions made on or after its effective date. The new standard would not apply to existing energy facilities except upon a clear showing of a significant threat to the public health, safety or the environment.

Alternative 2: Specify that the new standard will only apply to the review of Applications for Site Certificate and Requests for Amendment that are determined to be complete on or after the effective date.

Issue 2: Scope of Council Standard

- **Issue:** Should new standard apply to all types of energy facilities or specific types (i.e. transmission lines or electric power generation facilities)?
- **Background:** PUC rules focus on electric transmission or distribution lines. The Council has jurisdiction over many types of energy facilities, including:
 - High-voltage transmission lines
 - Thermal Power Plants
 - Wind, solar power, and geothermal power generation facilities
 - Natural gas pipelines and storage facilities
 - Fuel pipelines and production facilities

Issue 2: Scope of Council Standard

Alternatives 1 (recommended): Apply new standard to review of all types of proposed facilities.*

Alternative 2: Apply new standard only to review of all proposed electric power generation facilities and related or supporting facilities.

Alternative 3: Apply new standard only to review of proposed transmission lines, associated transmission lines.

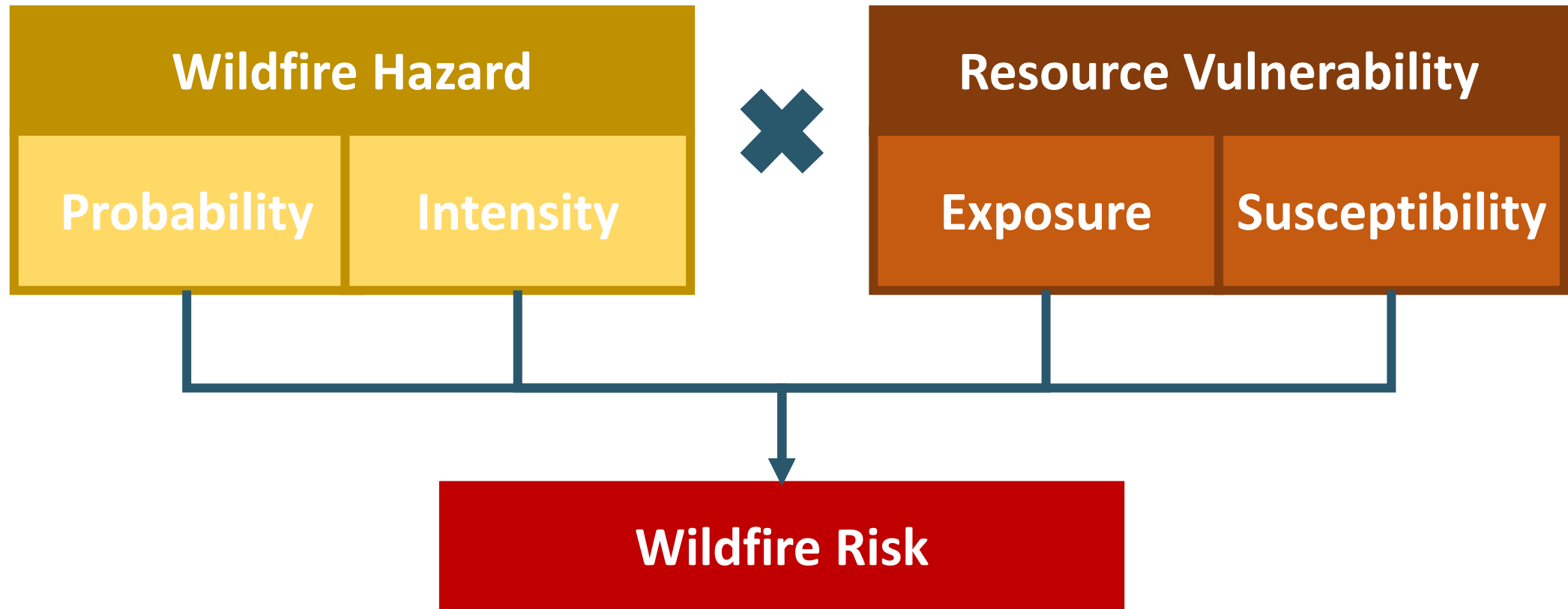
Issue 3: Wildfire Risk Analysis

Issue: Should specific methods or data for wildfire risk analyses be required?

Background: PUC rules require a utility to map areas of heightened risk of wildfire within its service territory but allow the utility to determine appropriate methods and data sources, as long as the analysis identifies:

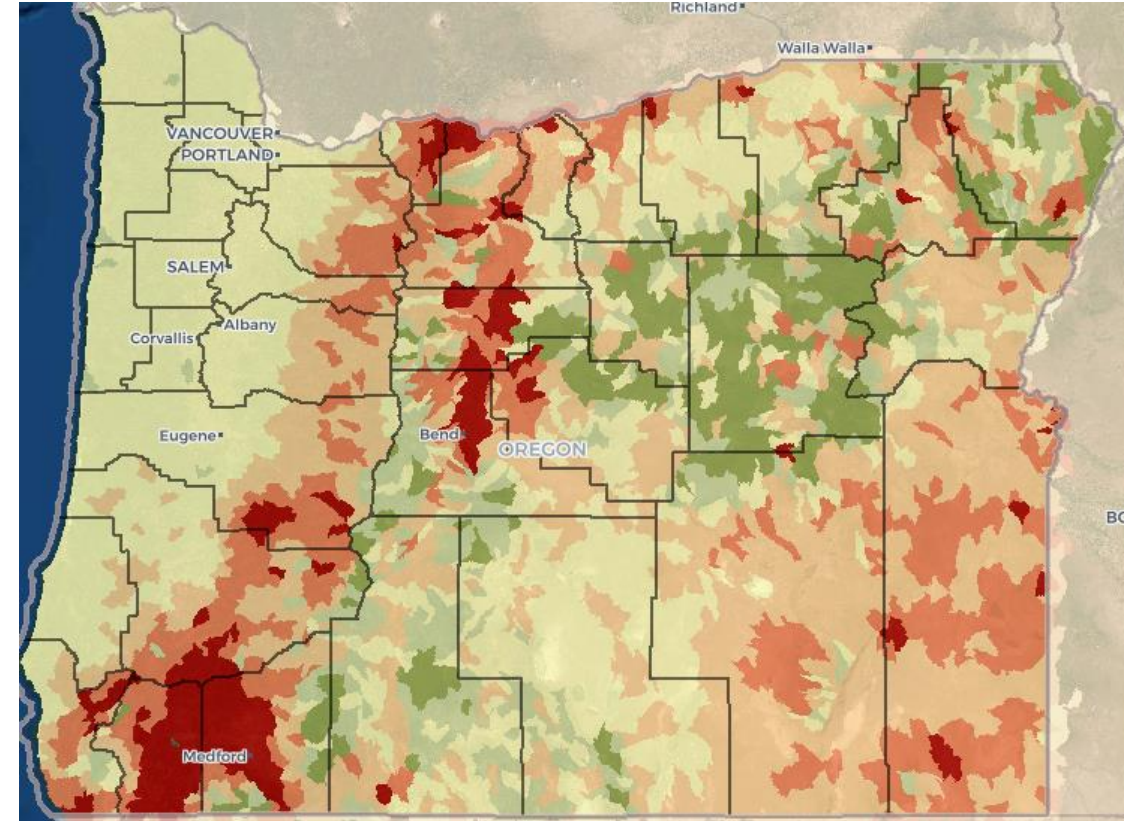
- Baseline wildfire risk, including topography, vegetation, utility equipment in place, and climate.
- Seasonal wildfire risk, including cumulative precipitation and fuel moisture content.
- Risks to residential areas served by the Public Utility
- Risks to substation or powerline owned by the Public Utility

Issue 3: Wildfire Risk Analysis



Issue 3: Wildfire Risk Analysis

- ORS 477.490 establishes the Oregon Wildfire Risk Explorer as the Oregon's official wildfire planning and risk classification mapping tool.
- The Wildfire Risk Explorer considers recreation opportunities, timber and agricultural resources, and wildlife, into the vulnerability analysis.



Watershed level wildfire risk summaries

Oregon Wildfire Risk Explorer: <https://oregonexplorer.info>

Issue 3: Wildfire Risk Analysis

Alternative 1 (Recommended): Require applicant to identify areas that are subject to a heightened risk of wildfire within the analysis area for a proposed facility, using its own methods.

Alternative 2: Require applicant to identify areas that are subject to a heightened risk of wildfire within the analysis area for a proposed facility, using the Oregon Wildfire Risk Explorer.

Alternative 3: Require applicant to identify areas that are subject to a heightened risk of wildfire within the analysis area for a proposed facility, using another methodology.

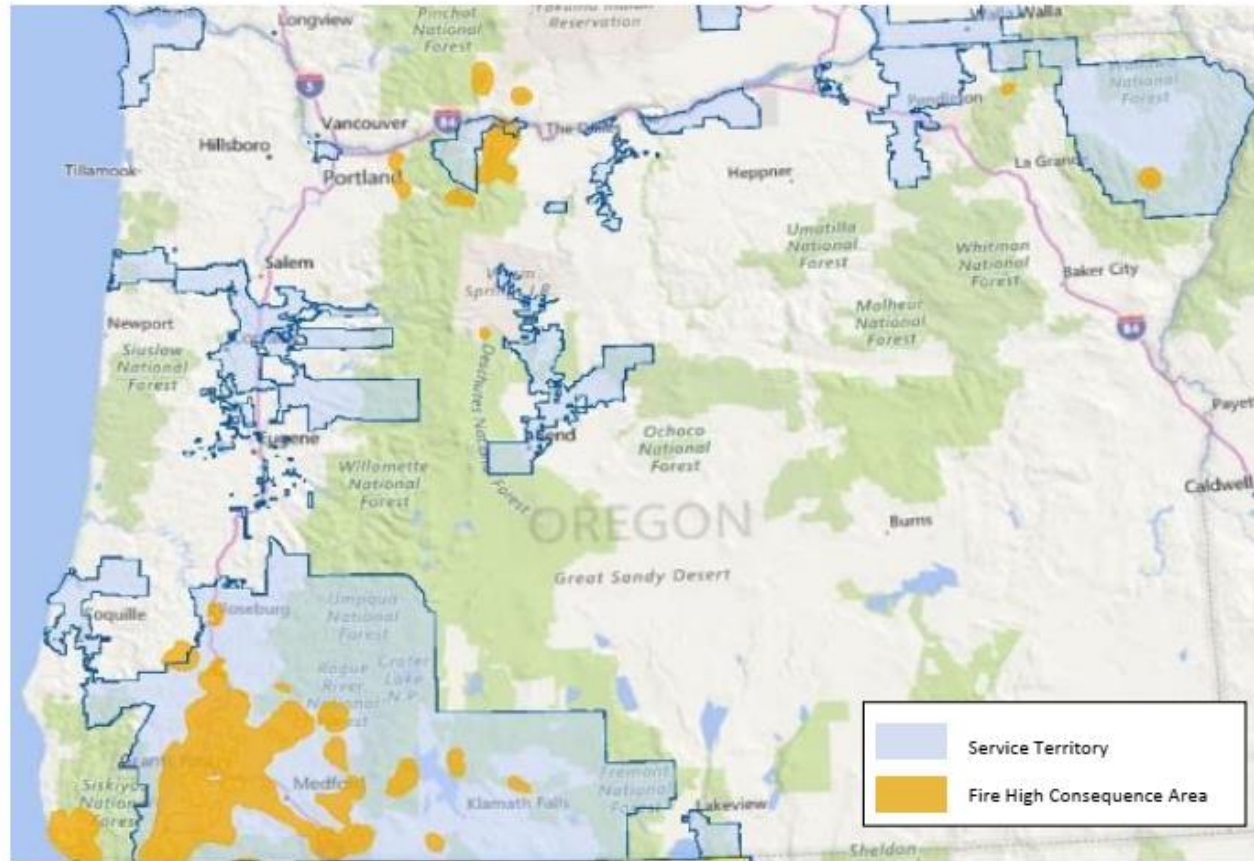
Issue 4: Study Area for Wildfire Risk

Issue: What is the appropriate study area for wildfire risk?

Background: An NOI must include initial information about the proposed facility and site based on the study areas established under OAR 345-001-0010(59). Study areas include the area within the proposed site boundary and the area within:

- One-half mile for land use impacts and impacts to fish and wildlife habitat
- 5 miles for impacts to threatened and endangered plant and animal species and recreational opportunities
- 10 miles for impacts to scenic resources and to public services
- 20 miles for impacts to protected areas

Issue 4: Study Area for Wildfire Risk



High Fire Consequence Area Map,
PacifiCorp 2022 Oregon Wildfire Protection Plan

Issue 5: Standard of Review

Issue: What criteria should be used to evaluate the wildfire risk associated with a proposed facility?

Alternative 1: That the design, construction, and operation of the facility will minimize the risk of an energy facility-caused wildfire

Alternative 2 (recommended): That the facility can be designed, constructed, and operated in a manner that, taking into account mitigation, is not likely to result in a significant increase in wildfire risk at the site.

Alternative 3: That the proposed facility will not be located within a high fire risk zone

Issue 6: Wildfire Mitigation Planning Requirement

Issue: Should a Council wildfire standard require some, or all, energy facilities to operate in compliance with a wildfire mitigation plan?

Alternative 1: Require all Energy Facilities to operate in compliance with a Wildfire Mitigation Plan.

Alternative 2: Require energy facilities located in or near areas of heightened wildfire risk or consequence to operate in compliance with a Wildfire Mitigation Plan.

Issue 7: Criteria for Wildfire Protection Plans

Issue: If the Council requires applicants to submit a wildfire mitigation plan, what should the minimum criteria for acceptance be?

Background: PUC Rules require Wildfire Protection Plans to Include:

- Identification of areas of heightened risk of wildfire
- Means for mitigating wildfire
- Preventive actions and programs to minimize risk of facilities causing wildfire
- Inspection Protocols
- Vegetation management protocols.
- Protocols for deenergizing power lines and adjusting power system operations
- Development, implementation and administration costs.
- Community outreach and public awareness efforts.

Issue 7: Criteria for Wildfire Protection Plans

Alternative 1 (recommended): Adapt PUC Wildfire Protection Plan requirements, excluding requirements related to Public Safety Power Shutoffs, community engagement, and cost development.

Alternative 2: Adopt other Wildfire Mitigation Plan requirements or criteria

Issue 8: Exception from Standard

Issue: Should there be an exception for facilities that are subject to a PUC or Consumer-Owned Utility Approved Wildfire Prevention Plan?

Alternative 1: Do not provide an exception for facilities subject to a PUC or COU approved Wildfire Protection Plan

Alternative 2 (recommended): Provide an exception for facilities subject to a PUC or COU approved Wildfire Protection Plan

Additional Recommendations for Council Rules

- Amend OAR 345-020-0011 and OAR 345-021-0010 to establish information requirements to support the findings required by the new standard.
- Consider whether additional rules are needed to address changes in wildfire risk over time due to climate in future rulemaking.

Next Steps

Item	Date
Council approves proposed rules and authorizes NOPR	May 27, 2022
Staff issues NOPR	June 1, 2022
Rulemaking hearing	June 23, 2022
Last day for public comment	July 21, 2022
Council consideration of permanent rules	July 22, 2022

Council Decision on Proposed Rules

Option 1

Authorize staff to issue NOPR with proposed rules presented in Attachment 1

Option 2

Authorize staff to issue NOPR with modifications to proposed rule presented in Attachment 1

Option 3

Reject proposed rules and deny authorization to issue NOPR.

Council Deliberation

Agenda Item H (Information Item)

**Nolin Hills Wind Power Project, Council Review of
Draft Proposed Order on ASC**

May 27, 2022

Kathleen Sloan, Senior Siting Analyst

Council Scope of Review

OAR 345-015-0230

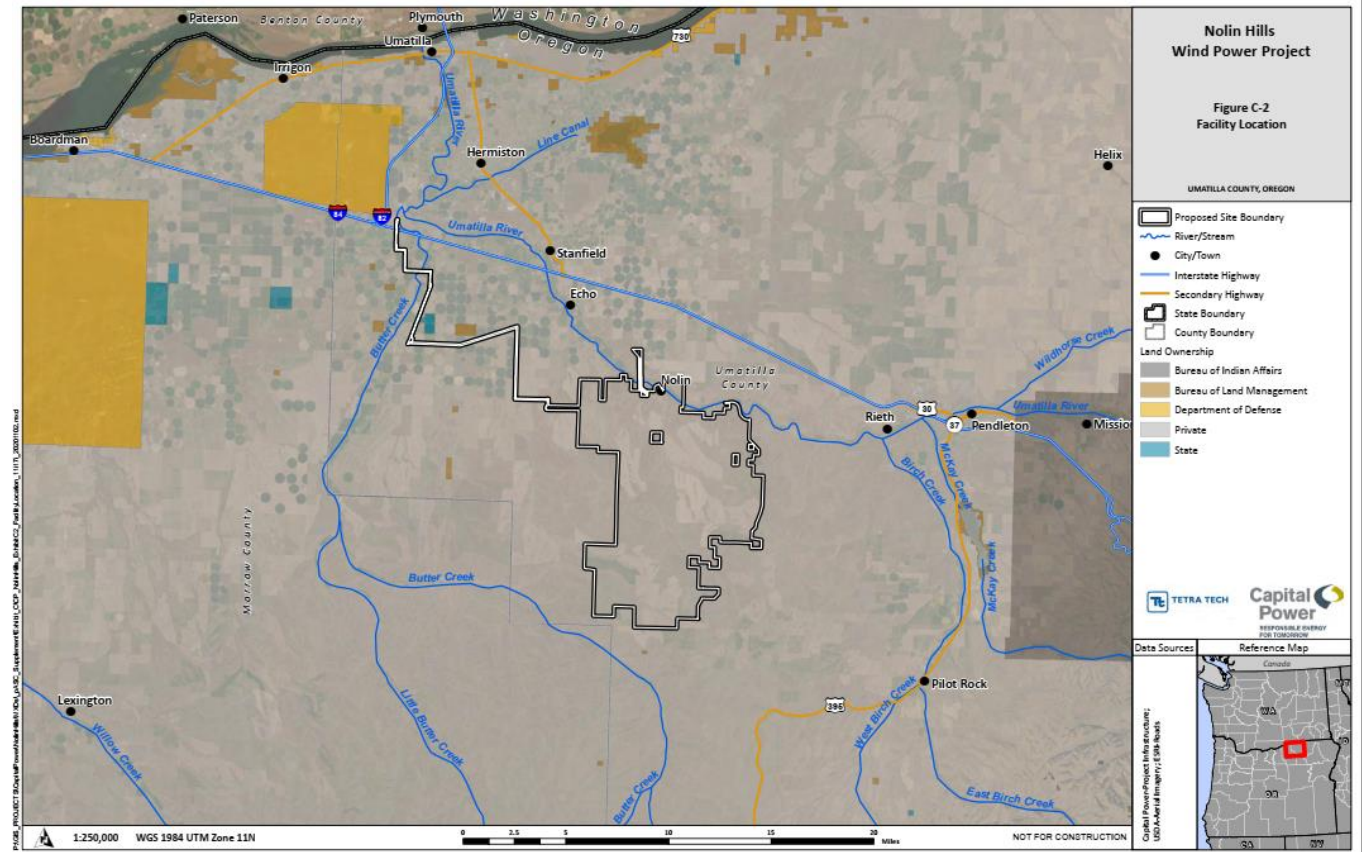
- Review DPO, DPO Comments by issue/standard, applicant's response to issues raised; Department recommendations
- Provide comments for Department consideration in Proposed Order
 - Provide comments individually, consensus, or vote at EFSC meeting
 - Provide comments by issue or standard as staff presents

Council Review of DPO/Comments

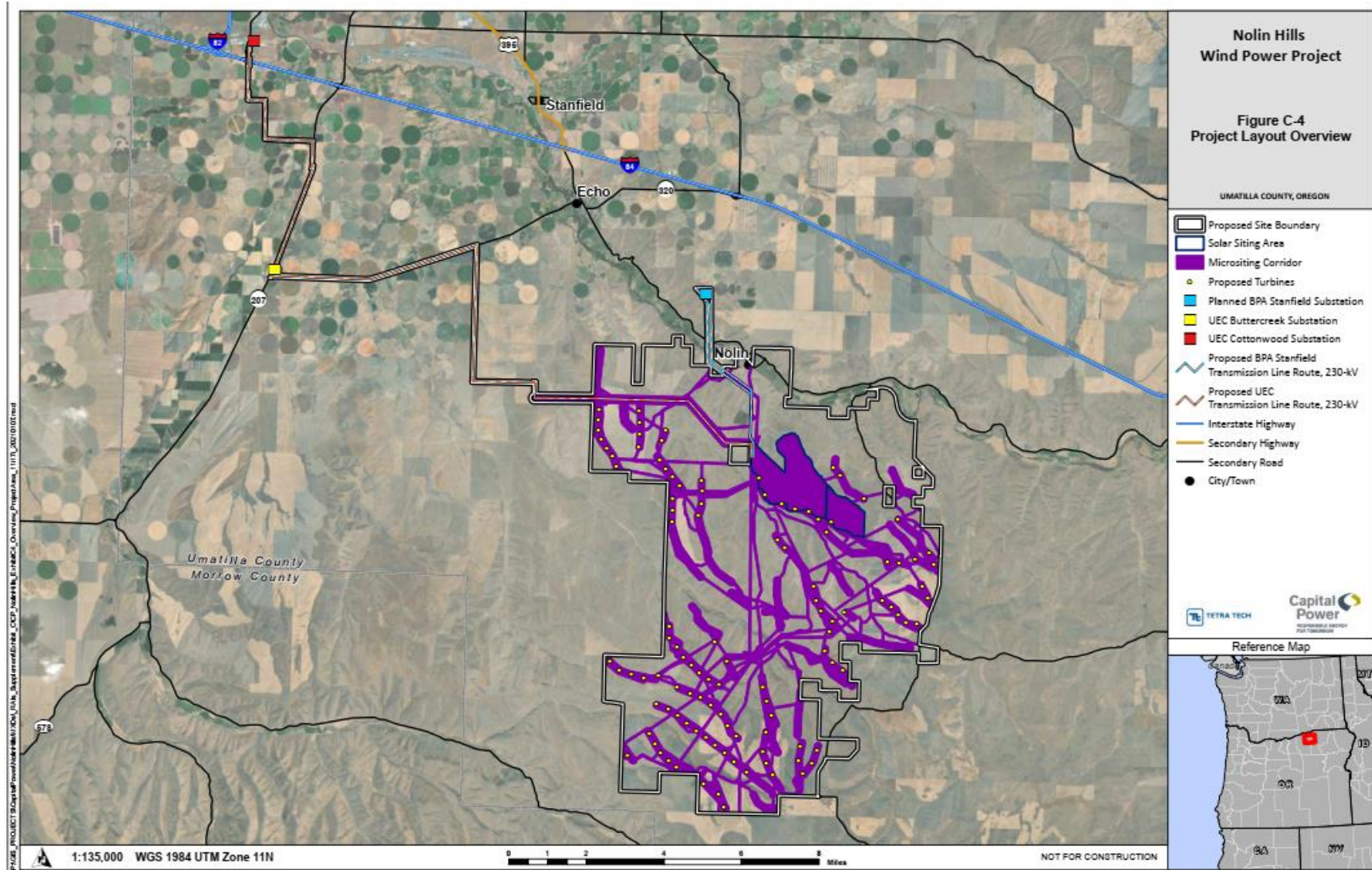
Description of Proposed Facility

(DPO Pages 7-23, Figure 1 on DPO page 22)

- Applicant: Nolin Hills Wind, LLC (applicant), a subsidiary of Capital Power Corporation.
- Proposed Facility: A 600-megawatt (MW) wind and solar energy facility. 48,196 Acre Site Boundary.
 - Related or supporting facilities include dispersed or centralized battery energy storage systems BESS and
 - two mile 230-kV gen-tie transmission lines, etc.
- Location: Northwestern Umatilla County



Council Review of DPO/Comments (DPO Pg. 23, Fig 2)



Council Review of DPO/Comments

Description of Related or Supporting Facilities (DPO Pages 7-17)

- Up to 112 3.03 MW wind turbines (Approximately 340 MW generating capacity)
- Up to 81,6812 solar modules (Approximately 260 MW generating capacity).
- A 120 MW Battery Energy Storage System (BESS)
- Up to 14.6 Miles of aboveground 34.5 kV Electrical Collection System;
- Up to 144 Miles of underground 34.5 kV Electrical Collection System;
- Up to 32.1 miles of 230 kV Transmission Lines (Substation Connector Line, and one of two provided Regional Grid Interconnection Line Route Options);
- 2 collector substations;
- Operations and Maintenance (O&M) Building;
- Up to 80 Miles of Internal/External Access Roads;
- Up to 9.4 miles of 8-foot Chain-Link or Mesh Perimeter Fencing for Solar Micrositing Areas and southern collector substation;
- Up to three Meteorological (met) towers;
- Communication and Supervisory Control and Data Acquisition (SCADA) System;
- Temporary Construction/Staging Areas.

Nolin Hills Wind Power Project: Procedural History

Milestone	Responsible Party	Date
Notice of Intent (NOI)	Applicant	Sept 11, 2017
Preliminary Application for Site Certificate (pASC) – Wind Only	Applicant	Feb 27, 2020
Revised Preliminary Application for Site Certificate (pASC) – Wind & Solar PV	Applicant	Nov 20, 2020
Application for Site Certificate (ASC)	Applicant	Jan 31, 2022
Draft Proposed Order (DPO)	ODOE	Apr 19, 2022
Public Hearing on the DPO	ODOE/EFSC	May 26, 2022
EFSC Review of DPO and Comments	EFSC	May 27, 2022*
Proposed Order and Notice of Contested Case	ODOE	TBD
Final Decision	EFSC	TBD

Council Review of DPO/Comments

Comments received to date (Reviewing Agencies):

No comments on DPO received from reviewing agencies as of May 19, 2022

Comments received to date (General Public):

One comment on transmission line route (BPA route crossing Umatilla river) from a property owner stating permission has not been granted.

Council Review of DPO/Comments

Section IV.A. General Standard of Review: OAR 345-022-0000 [DPO Pages 22-31]

General Standard of Review requires the Council to find that a preponderance of evidence on the record supports the conclusion that a proposed facility would comply with the requirements of EFSC statutes and the siting standards adopted by the Council and that a proposed facility would comply with all other Oregon statutes and administrative rules applicable to the issuance of a site certificate for the proposed facility.

Council Review of DPO/Comments

Section IV.A. General Standard of Review: OAR 345-022-0000

- *Balancing Request: Washington Ground Squirrel (WGS) (DPO Pages 24-26)*

In the ASC, the applicant has requested that Council make a balancing determination for Category 1 habitat and Washington Ground Squirrel under EFSC's Fish and Wildlife/Threatened and Endangered Species Standards.

OAR 345-022-0000(2) applies to ASCs where an applicant "has shown that the proposed facility cannot meet Council standards or has shown, to the satisfaction of Council, that there is no reasonable way to meet the applicable Council standards through mitigation or avoidance of any adverse effects on a protected resource or interest."

The Department recommends Council deny the applicant's request to make a balancing determination for temporary and permanent habitat impacts because the applicant did not evaluate why it cannot meet the standard or why there is no reasonable way to meet the standard through mitigation or avoidance.

Council Review of DPO/Comments

Section IV.A. General Standard of Review: OAR 345-022-0000 (DPO Pages 27-30)

The duration of proposed facility construction is estimated at 18 months, and would include phased construction. The applicant requests a deadline for construction completion of 3 years later than the deadline for beginning construction, or 6 years from issuance of the site certificate. Department recommends Council approve applicant's request per **Recommended General Standard Condition 1 (CON)**.

Site-specific **Recommended General Standard Condition 8 (CON)** would authorize the certificate holder to construct 230-kV transmission lines anywhere within the approved 200-foot wide corridors, subject to the conditions of the site certificate. The 200-foot wide corridors include: substation connector line, the 2 transmission line options (UEC Cottonwood Route, and BPA Stanfield Route).

Additional conditions under this standard include Mandatory conditions (required pursuant to OAR 345-025-0006) and Site-Specific conditions (OAR 345-025-0010)

Council Review of DPO/Comments

Section IV.B. Organizational Expertise: OAR 345-022-0010 [DPO pages 31-37]

Subsections (1) and (2) of the Council's Organizational Expertise standard require that the applicant demonstrate its ability to design, construct and operate the proposed facility in compliance with Council standards and all site certificate conditions, and in a manner that protects public health and safety, as well as its ability to restore the site to a useful, nonhazardous condition. Subsections (3) and (4) address third party permits.

Council Review of DPO/Comments

Section IV.B. Organizational Expertise: OAR 345-022-0010

Nolin Hills Wind, LLC is a project-specific LLC without prior experience. The applicant's parent company, Capital Power, owns 12 operational, wind and solar energy projects in North America (eight in the United States, and seven in Canada), ranging from 15 MW – 201.6 MW, totaling 1,441.6 MWs). (DPO page 32-33)

Capital Power has not received any citations during operation of its U.S.-based wind energy facilities; for projects it has constructed, none of its contractors received any regulatory citations. The Department evaluated the AUC website for compliance and enforcement actions against Capital Power, and affirms that there are no cited or pending actions. (DPO Page 34)

Recommended Organizational Expertise Conditions 1 through 5 will require the certificate holder to demonstrate the use of qualified personnel, contractors and confirm that the responsibility of compliance with the site certificate would be with the applicant. (DPO pages 33-34)

Council Review of DPO/Comments

Section IV. C. Structural Standard: OAR 345-022-0020 [DPO pages 37-48]

Structural Standard generally requires the Council to evaluate whether the applicant has adequately characterized the potential seismic, geological and soil hazards of the site, and whether the applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment from these hazards.

Council Review of DPO/Comments

Section IV. C Structural Standard: OAR 345-022-0020

The applicant represents that it would conduct a preconstruction, site-specific geotechnical assessment to inform final design and siting – and affirms that they would rely on the most current codes at the time for the assessment. (DPO Page 39)

The Department's consultant, a Professional Engineer from Hart-Crowser, DOGAMI and the applicant identified that the preconstruction, site-specific geotechnical investigation should be designed to provide suitable subsurface information for determining Site Class; ensure that current code and design standards are used; and that Quaternary faults be considered active and included in the site-specific hazard analysis.

Structural Conditions 1 through **4** would require pre-construction geotechnical investigation, and that the facility be designed, engineered & constructed in accordance with current building codes (DPO Pages 40 and 46).

Council Review of DPO/Comments

Section IV.D. Soil Protection: OAR 345-022-0022 [DPO pages 49 - 53]

Soil Protection standard requires the Council to find that, taking into account mitigation, the design, construction, and operation of a proposed facility are not likely to result in a significant adverse impact to soils.

Council Review of DPO/Comments

Section IV. D Soil Protection: OAR 345-022-0022

Applicant identified 52 different soil types within the analysis area and 10 different soil types within the proposed site boundary. Eight of these 10 soil types are silt loams with depths ranging from 0.5 feet deep to greater than 7 feet deep with moderate to high permeability on slopes ranging from 1 to 40 percent with erosion hazard ratings from slight to severe. (DPO Page 49)

To minimize construction-related erosion impacts to soils, the applicant would obtain a National Pollutant Discharge Elimination System (NPDES) 1200-C construction permit and would implement an Erosion and Sediment Control Plan (ESCP).

The Department recommends **Soil Protection Conditions 1** through **8** to minimize impacts to soils. (DPO Pages 50-52)

Council Review of DPO/Comments

Section IV.E. Land Use: OAR 345-022-0030 [DPO pages 52-146]

Land Use standard requires the Council to find that a proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission (LCDC). Under ORS 469.504(1)(b)(A), the Council may find compliance with statewide planning goals if the Council finds that a proposed facility “complies with applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted...”

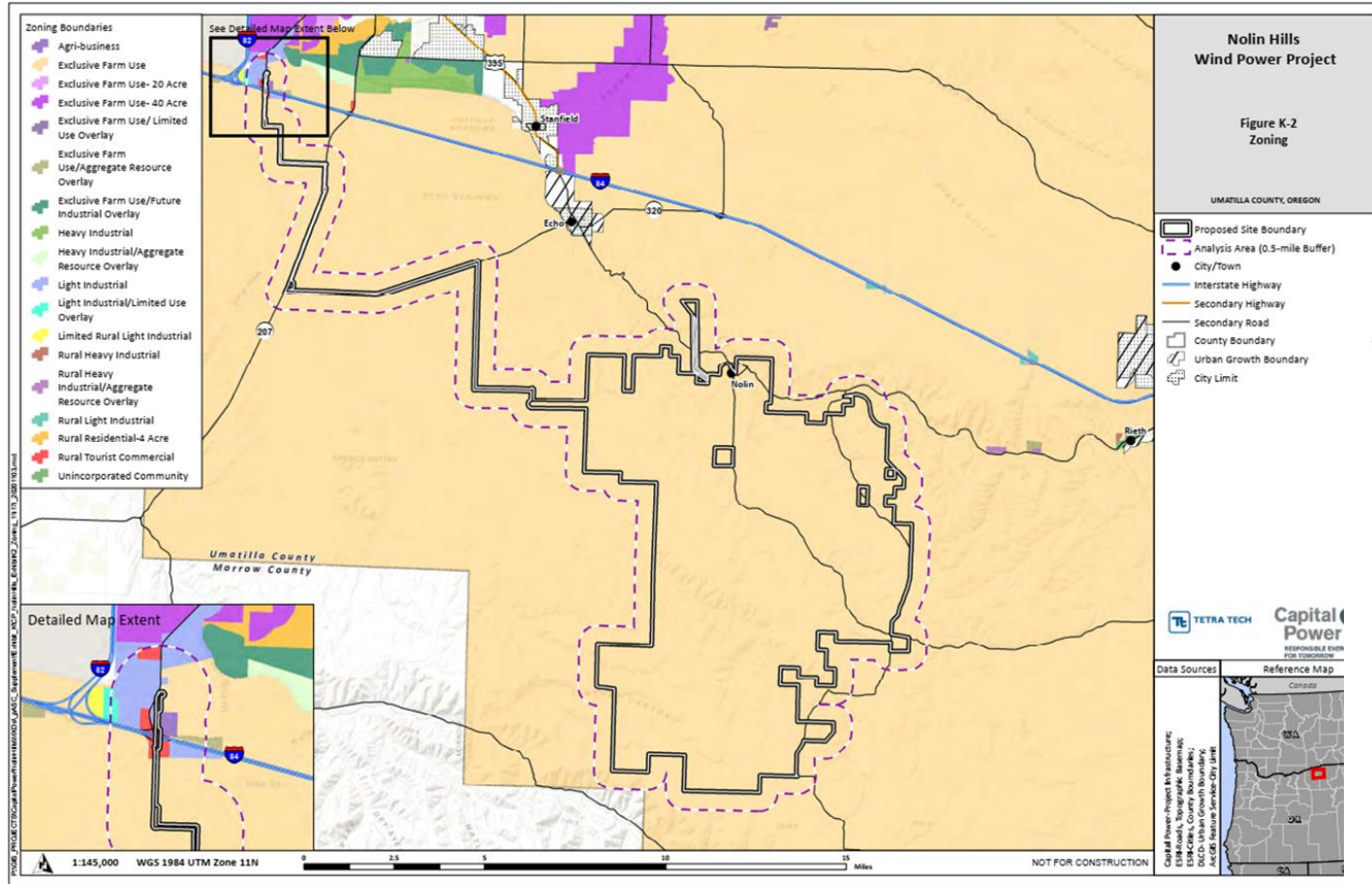
Council Review of DPO/Comments

Section IV. E Land Use: OAR 345-022-0030

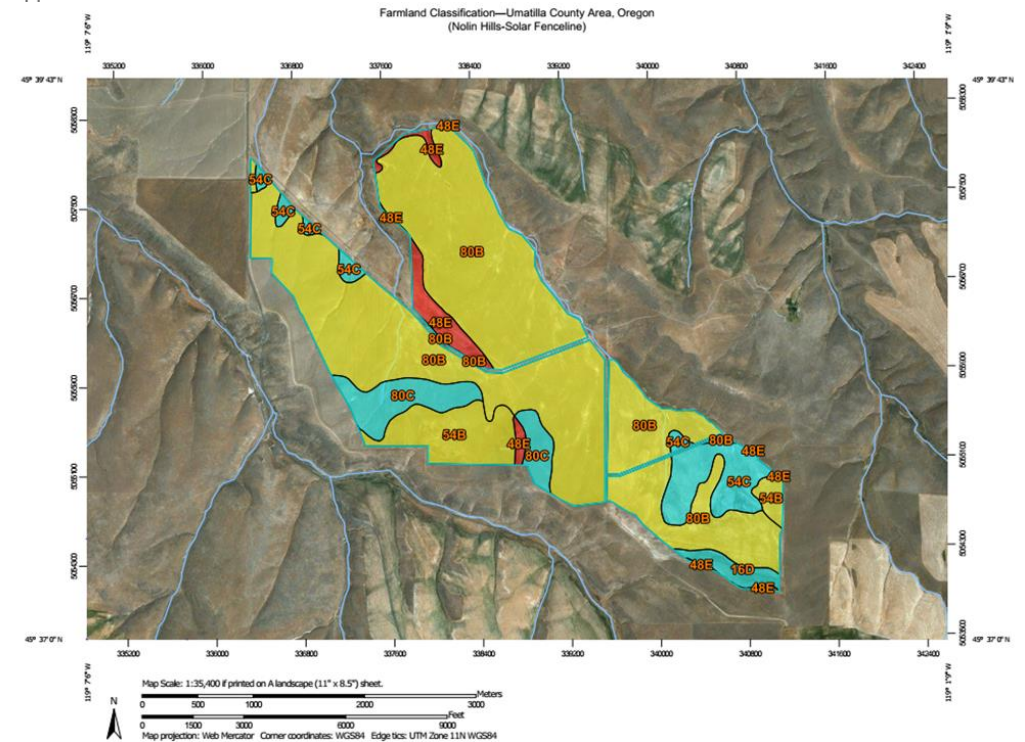
The proposed facility includes the following land uses and zones (DPO Pages 55-56, Figure 3):

- **Commercial wind power generation facility, Exclusive Farm Use (EFU) zone**
 - Up to 112 wind turbines, electrical collection system, O&M building, substation
- **Photovoltaic solar power generation facility, EFU zone**
 - Up to 1,896 acres of solar PV energy generation components, BESS, and associated roads
- **Utility facilities necessary for public service**
 - 25.3 mile 230 kV UEC Cottonwood transmission line, EFU, Rural tourist commercial zone (RTC), Agri-Business Zone (AB), Light industrial (LI) zones
 - 5-mile 230 kV BPA Stanfield transmission line, EFU zones
 - 6.8-mile 230 kV Substation connector line, EFU zones

Land Use Zones (Fig. 3, Pg. 56 and Fig. 5, Pg. 133)



Solar Area: Goal 3 Exception Request



Council Review of DPO/Comments

Section IV. E Land Use: OAR 345-022-0030

UCDC and 2-mile setback:(DPO Pages 73-82)

- The Department recommends Council find that the 2-mile rural residential setback for wind turbines, established under UCDC 152.616(HHH)(6)(a)(3), is not part of Umatilla County’s applicable substantive criteria because it is not “required” by any implementing statewide planning goals, and therefore it is not required to be applied to the project.
- If Council disagrees and finds that the UCDC 2-mile setback is part of Umatilla County’s applicable substantive criteria, the project is also evaluated against and found consistent with the 19 Statewide Planning Goals, pursuant to ORS 469.504(1)(b)(B).

Council Review of DPO/Comments

Section IV. E Land Use: OAR 345-022-0030

Goal 3 Exception request or Solar Facility in EFU Zone

Over 12 acres of high value farmland impacted by the solar facility – requires a Goal 3 exception.

The solar facility components would impact over 12 acres of high value and arable farmland and require that Council take an exception to the Statewide Policy embodied in Goal 3, *Agricultural Lands*, in order to be sited in the proposed location.

The Department recommends Council find that sufficient facts and evidence were provided to justify taking a “reasons” goal exception for use of the high-value and arable land for the proposed solar facility components based on the two following reasons:

- 1) *minimal impacts to agriculture* (less than 1% of agricultural and cultivated dryland winter wheat within Umatilla County and less than 2% of the underlying landowner, Cunningham Sheep Company’s; and
- 2) *local economic benefits* (Umatilla County would receive property tax payments in excess of \$39 million).

Council Review of DPO/Comments

Section IV. F Protected Areas: OAR 345-022-0040 [DPO pages 146-161]

Protected Areas standard requires the Council to find that, taking into account mitigation, the design, construction and operation of a proposed facility are not likely to result in significant adverse impacts to any protected area as defined by OAR 345-022 0040.

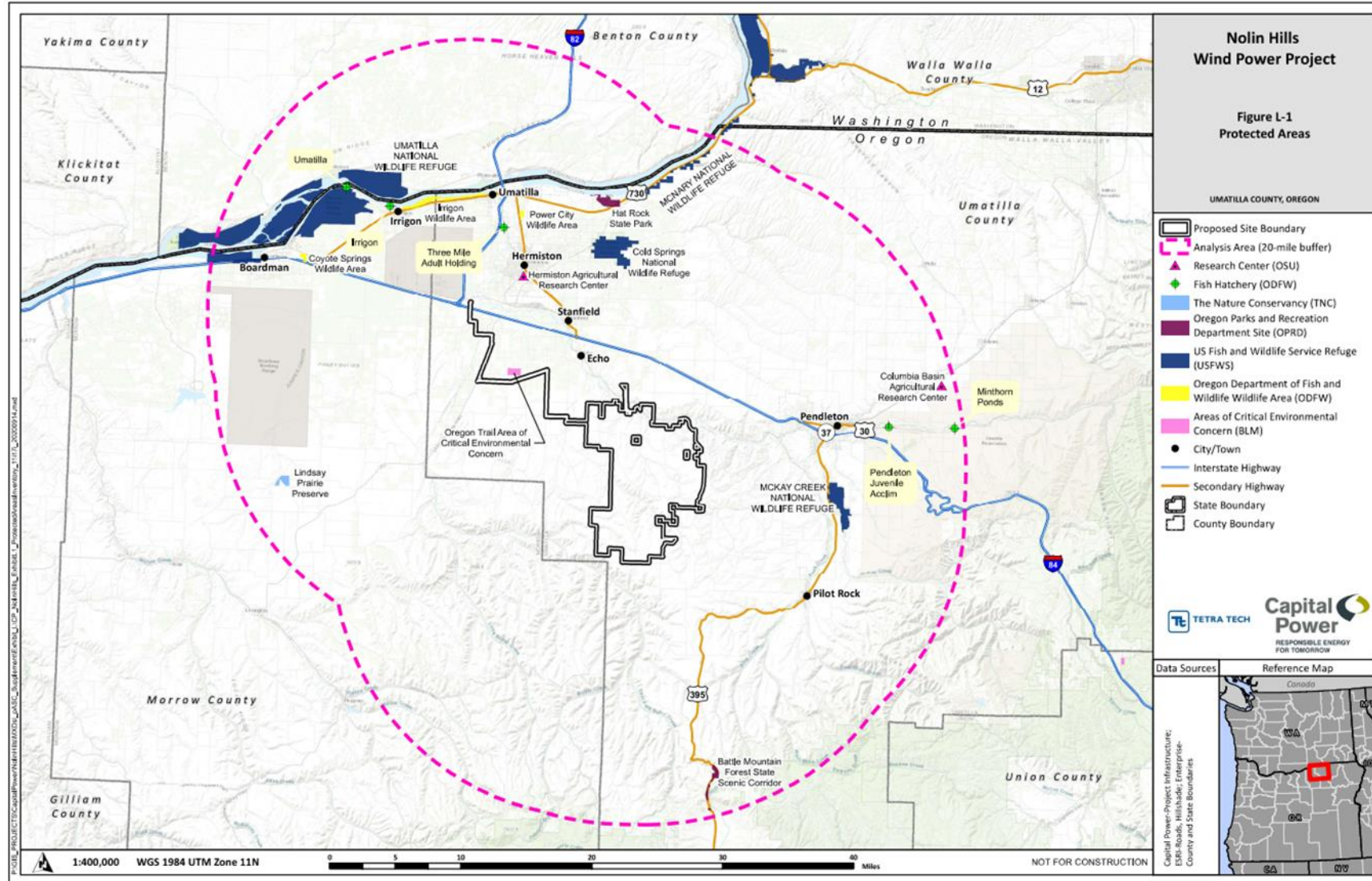
Council Review of DPO/Comments

Section IV. F Protected Areas: OAR 345-022-0040

As shown in Table 5 (DPO Page 149) the applicant identified 18 protected areas within the analysis area, including:

- 4 state wildlife refuges (OAR 345-022-0040(1)(d))
- 5 state fish hatcheries (OAR 345-022-0040(1)(f))
- 2 state parks (OAR 345-022-0040(1)(h))
- 1 state heritage area (OAR 345-022-0040(1)(i))
- 2 agricultural experimental stations (OAR 345-022-0040(1)(m))
- 1 Bureau of Land Management (BLM) Area of Critical Environmental Concern (ACEC) (OAR 345-022-0040(1)(o))
- 3 state wildlife areas (OAR 345-022-0020(1)(p))

Protected Areas in Analysis Area (Pg. 151)



Council Review of DPO/Comments

Section IV. F Protected Areas: OAR 345-022-0040

The Echo Meadows/ONHT site is the closest Protected Area to the project.

Wind and solar components would be 6 or more miles away from the closest Protected Area.

Echo Meadows is approximately 1,500 feet North of the proposed 230 kV UEC transmission line.

The Department recommends **recommended Protected Areas Conditions 1 and 2**, requiring notification of construction schedule to the protected areas manager and implementation of a noise complaint system for work in this area, to minimize any potential noise impacts on Echo Meadows site related to construction of the 230 kV UEC Cottonwood transmission line, if selected.

Council Review of DPO/Comments

Section IV. G Retirement and Financial Assurance: OAR 345-022-0050

[DPO pages 161-172]

Retirement and Financial Assurance standard requires a finding that the proposed facility site can be restored to a useful, non-hazardous condition at the end of the facility's useful life, should either the applicant (certificate holder) stop construction or should the facility cease to operate. In addition, it requires a demonstration that the applicant can obtain a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

Council Review of DPO/Comments

Section IV. G Retirement and Financial Assurance: OAR 345-022-0050

Applicant estimates a proposed useful life of 30 years (DPO page 162) and proposed a decommissioning cost of \$31.5 million

Department's recommended retirement cost estimate: \$39,643,563 (DPO page 169) based upon Department corrections and adjustments for 10% contingency fee.

Applicant provided letter from Royal Bank of Canada to demonstrate financial assurance. (DPO page 170).

Recommended Retirement and Financial Assurance Condition 4 (PRE) requires an updated bond or bank letter based on revised amount, based on design and adjusted annually.

Council Review of DPO/Comments

Section IV. H Fish and Wildlife Habitat: OAR 345-022-0060 [DPO pages 172-185]

Fish and Wildlife Habitat standard requires the Council to find that the design, construction and operation of a facility is consistent with the Oregon Department of Fish and Wildlife's (ODFW) habitat mitigation goals and standards, as set forth in OAR 635-415 0025. This rule creates requirements to mitigate impacts to fish and wildlife habitat, based on the quantity and quality of the habitat as well as the nature, extent, and duration of the potential impacts to the habitat.

Council Review of DPO/Comments

Section IV. H Fish and Wildlife Habitat: OAR 345-022-0060

Surveys have identified Category 1 habitat for Washington Ground Squirrel (WGS) within the analysis area.

Category 1 WGS habitat is designated as 785-foot radius from active WGS colonies, unless there is a habitat break.

Applicant has committed to avoiding all Category 1 habitat.

Preconstruction surveys will be conducted to verify Category 1 habitat to be avoided in final facility design.

Council Review of DPO/Comments

Section IV. H Fish and Wildlife Habitat: OAR 345-022-0060

Estimated temporary impacts: 286 acres of Category 2, 264 acres of Category 3, 212 acres of Category 4, and 483 acres of Category 5 habitat.

Category 2, 3, 4 and 5 habitat, will be mitigated through successful noxious weed control and revegetation within a 5-year timeframe are required.

Recommended Fish and Wildlife Conditions 1 through 3 require the Noxious Weed and Revegetation Plan.

Estimated permanent habitat impacts are estimated at 181 acres. This would include permanent impacts to 15 acres of Category 2, 41 acres of Category 3, 46 acres of Category 4, and 79 acres of Category 5.

Recommended Fish and Wildlife Conditions 4 and 5 outline requirements for the Habitat Mitigation Plan and Habitat Mitigation Areas.

Council Review of DPO/Comments

Section IV.I. Threatened and Endangered Species: OAR 345-022-0070

[DPO pages 185-191]

Threatened and Endangered Species standard requires the Council to find that the design, construction, and operation of the proposed facility are not likely to cause a significant reduction in the likelihood of survival or recovery of a fish, wildlife, or plant species listed as threatened or endangered by Oregon Department of Fish and Wildlife (ODFW) or Oregon Department of Agriculture (ODA).

Council Review of DPO/Comments

Section IV.I. Threatened and Endangered Species: OAR 345-022-0070

Two threatened and endangered species were identified at the proposed facility site: Washington ground squirrel (WGS) and Laurence's milkvetch.

Recommended **Threatened and Endangered Species Condition 1** would require that the applicant conduct preconstruction habitat surveys based on final facility design.

Based on those survey results, would require avoidance: 785 foot buffers from disturbance to any locations where active WGS burrows/colonies were identified.

Council Review of DPO/Comments

Section IV.J. Scenic Resources: OAR 345-022-0080 [DPO pages 191-201]

Scenic Resources standard requires the Council to find that visibility of proposed facility structures, plumes, vegetation loss and landscape alterations would not cause a significant adverse impact to identified scenic resources and values. To be considered under the standard, scenic resources and values must be identified as significant or important in local land use plans, tribal land management plans, and/or federal land management plans.

Council Review of DPO/Comments

Section IV.J. Scenic Resources: OAR 345-022-0080

Applicant evaluated potential impacts from construction and operation to the scenic resources identified as significant or important in the local, state, tribal, and federal land management plans.

Based on the Scenic resources definition and visual impacts analysis conducted by the applicant, the Department recommends Council find that there are two “significant” or “important” scenic resources within the analysis area including: portions of the Umatilla River within the City of Pendleton and BLM’s Echo Meadows site.

Echo Meadows: Proposed 230 kV UEC transmission line route would not be visible when visitors are oriented toward the remnant Oregon Trail ruts. BLM, the managing agency of the Echo Meadows site, affirmed that visibility of the proposed transmission line would conform with BLM’s visual resource zone for the viewshed.

Umatilla River: From the river looking toward the proposed facility, the existing viewshed includes roadways, bridges and existing transmission line crossings, residential and commercial buildings, and agricultural fields. Based on the distance (over 5-miles), occasional views of wind turbines would not feature prominently in the viewshed.

Council Review of DPO/Comments

Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090 [DPO pages 201-222]

Section (1) of the Historic, Cultural and Archaeological Resources standard generally requires the Council to find that a proposed facility is not likely to result in significant adverse impacts to identified historic, cultural, or archaeological resources.

Resources protected under the standard include archeological sites (ORS 358.905(1)(c)), archeological objects (ORS 358.905(1)(a)) and any historic, cultural or archeological resource listed or likely eligible for listing on the National Register of Historic Places (NRHP).

Council Review of DPO/Comments

Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090

Thirty-three (33) archeological sites considered likely NRHP eligible were identified within the analysis area.

Twenty-nine (29) of the thirty-three (33) archeological sites were identified as Historic Properties of Religious and Cultural Significance to Indian Tribes by the Confederated Tribes of the Umatilla Indian Reservation.

Historic, Cultural and Archeological Resources Condition 1 and 5 requiring that, prior to construction, the applicant complete all necessary surveys and evaluations and implement a Historic Resources Management Plan.

Historic, Cultural, and Archeological Resources Condition 2, 3 and 4 requiring that the applicant implement a Monitoring and Inadvertent Discovery Plan during any ground disturbing activities associated with construction and operation to monitor and avoid all known identified cultural resources requiring 50-foot avoidance buffer.

Historic, Cultural and Archeological Condition 6 requiring submittal of all additional required survey results be submitted to SHPO and the Department.

Council Review of DPO/Comments

Section IV.L. Recreation: OAR 345-022-0100 [DPO pages 222-232]

Recreation standard requires the Council to find that the design, construction, and operation of a facility would not likely result in significant adverse impacts to “important” recreational opportunities. Therefore, the Council’s Recreation standard applies only to those recreation areas that the Council finds to be “important,” utilizing the factors listed in the subparagraphs of section (1) of the standard.

Council Review of DPO/Comments

Section IV.L Recreation: OAR 345-022-0100

The Department recommends Council find that there are three “important” recreational opportunities within the analysis area – Echo Meadows Interpretive Site, Corral Springs ONHT viewing site and Fort Henrietta Park.

The Department recommends Council find the project will have potential to cause temporary, construction noise from the BPA Stanfield transmission line to the Echo Meadows/ONHT Site. No additional impacts on recreational opportunities as a result of the project were identified.

Recommended Protected Areas Conditions 1 and 2 will require that the applicant coordinate with the recreation/BLM manager and implement a noise complaint/response program to minimize impacts at the site and to users of the site.

Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [DPO pages 232-273]

Assumptions

- *Construction of the proposed facility to take 18 months to two years;*
- *Proposed facility may be constructed in phases, or by facility component or related or supporting facility;*
- *Average number of construction workers would be 140 people, maximum number of workers during peak construction months would be approximately 500 people;*
- *30 percent of locally hired personnel. 42 workers during average construction periods and 150 workers during peak construction summer months.*
- *Approximately 10-15 operational personnel expected to be permanently employed to operate the proposed wind and solar facility*

Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [DPO pages 232-273]

IV.M.1. Sewers and Sewage Treatment

IV.M.2. Water Services → IV.Q.3. Water Rights

IV.M.3. Stormwater Drainage

IV.M.4. Solid Waste Management → IV.N. Waste Minimization

IV.M.7. Police Protection

IV.M.9. Housing

IV.M.10. Healthcare and Schools

Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [pages 241]

IV.M.5. Traffic Safety:

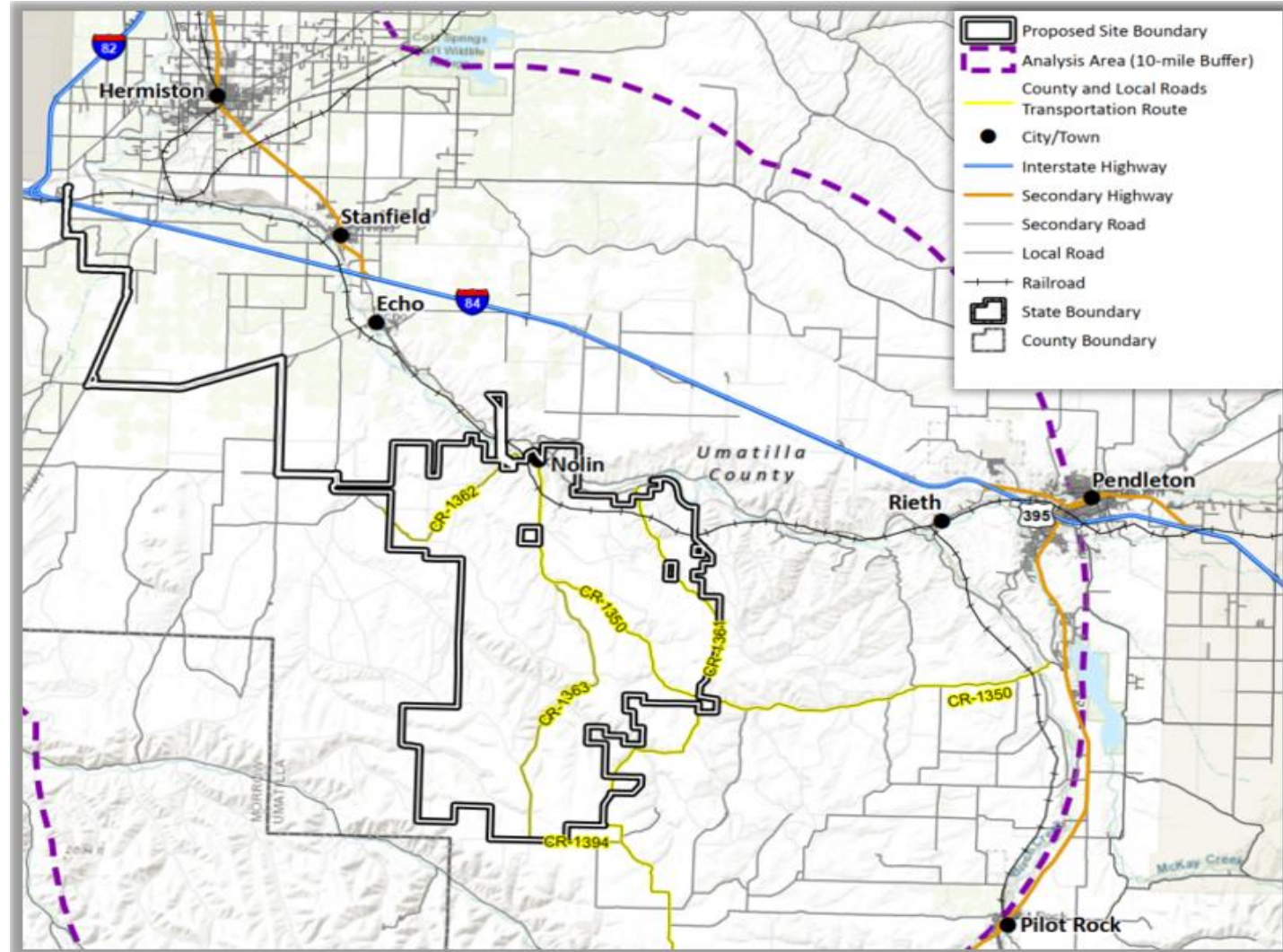
- Estimated maximum worker trips 400 round trips and 800 one-way trips per day; haul and delivery trips 117 round trips and 234 one-way trips per day. Total maximum daily construction-related traffic would be approximately 1,034 one-way trips and 2,068 round trips.
- The 2002 Umatilla County Transportation System Plan (TSP) county road classification system includes four road classes; all arterials in Umatilla County are interstate, national, and state highways, part of the state highway system; rural county roads are classified as either rural major collectors, rural minor collectors, or rural local roads and are assigned a County Road Number.



Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [pages 241]

IV.M.5. Traffic Safety:



Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [pages 241]

IV.M.5. Traffic Safety:

Recommended Public Services Condition 1 (PRE): Prior to construction of the facility, or facility component, the certificate holder shall finalize, identify, and provide maps of all public roads used for construction, road names, locations, segments used, and road conditions and include in Final Traffic Management Plan that will include road use agreements executed between Umatilla County and other municipalities and the certificate holder or its contractor.



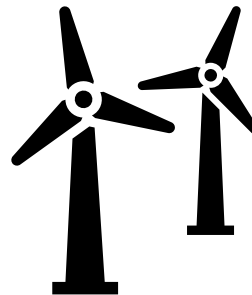
Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [pages 251]

IV.M.6. Air Traffic:

The tallest facility structures that may create an impact for public or private airports are:

- Wind turbines with a maximum blade tip height of 496 feet;
- Met towers with a maximum height of 266 feet;
- UEC Cottonwood Route and BPA to Stanfield 230 kV transmission lines on wooden H-frame or steel monopole structures approximately 100 to 140 feet tall; and
- Aboveground portions of the collector lines for the wind and solar facility components up to 100 feet tall.



Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [pages 251]

IV.M.6. Air Traffic:

Table 18: Proximity of Proposed Facility Site Boundary and Components to Regional Airports

Airport	UEC Transmission Line Site Boundary		Energy Facility Site Boundary	
	Distance (mi)	Direction ¹	Distance (mi)	Direction ¹
West Buttercreek	3.44	SSW	8.09	W
Eastern Oregon Regional, Pendleton	18.03	ENE	7.8-8.45 ²	ENE
Hermiston Municipal	5.79	ENE	10.2	NNW
Lexington	23.82	SW	26.01	WSW

Source: Department compiled with data provided by applicant and in consultation with Oregon Department of Aviation.
¹ Cardinal direction provided are the direction from site boundary/facility component location to the airport location.
² Applicant estimates distance from the site boundary to the Eastern Oregon Regional Airfield at Pendleton as 7.8 miles and Department GIS estimate is 8.45 miles.

Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [pages 251]

IV.M.6. Air Traffic:

Recommended Public Services Condition 3 (PRE): Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall submit 7460-1 Notice of Proposed Construction or Alteration Forms for all new or replaced supporting facilities or structures that meet the height and imaginary surface criteria for notice to FAA and ODA. Provide copies of FAA determinations and ODA comments to the Department.

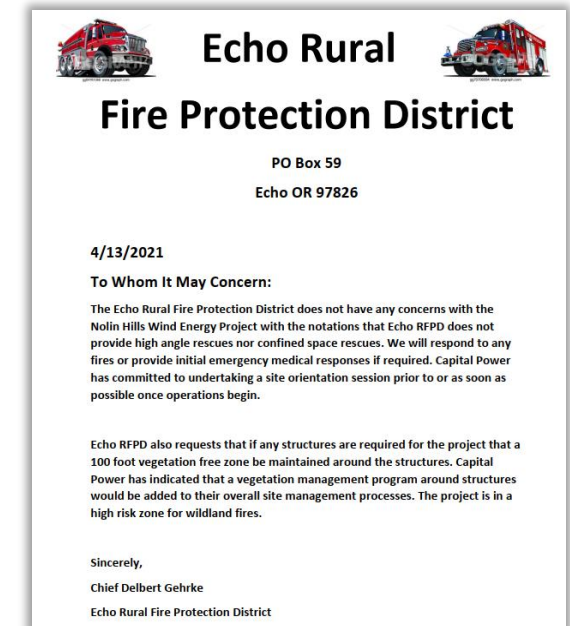
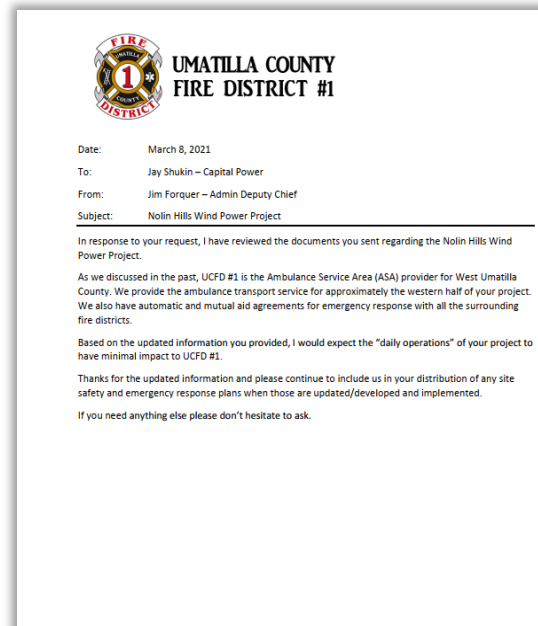
Recommended Public Services Condition 4 (CON): Within five-days after construction of facility components evaluated in the FAA Form 7460-1 reach their greatest height as specified in the FAA determinations listed in Public Services Condition 3(b), the certificate holder shall submit 7460-2 forms to FAA and Aviation and shall report both timing of submission and any results to the Department.

Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [DPO page 260]

IV.M.8. Fire Protection:

- The proposed facility would be located in a high-risk zone for wildland fires.
- Fire protection agencies that would serve the proposed facility in case of a fire emergency:
 - Echo Rural Fire Protection District
 - Umatilla County Fire District #1



Council Review of DPO/Comments

Section IV.M. Public Services: OAR 345-022-0110 [DPO page 266]

IV.M.8. Fire Protection:

Recommended Public Services Condition 7 (PRE): Prior to construction of the facility, or facility component the certificate holder shall finalize and submit to the Department and fire protection agencies a Fire Prevention, Suppression and Emergency Management Plan which shall include at a minimum the provisions included in Attachment U-2 of the Final Order on ASC.

Draft Fire Prevention, Suppression and Emergency Management Plan	Draft Fire Prevention, Suppression and Emergency Management Plan
<p>I. Construction Fire Risk: Construction and operation of the proposed facility could result in impacts to fire protection providers due to increased fire risk within the analysis area. Construction-related fire risks include accidental fires caused by from metal cutting and welding used to construct the steel reinforcing cages for foundations. Additional construction-related fire hazards could result from workers smoking and vehicle and equipment refueling, and operating equipment off roadways in areas of tall dry grass that could ignite upon contact with hot vehicle parts, particularly in dry seasons.</p> <p>I.A. Construction: Avoidance, Reduction, and Mitigation Measures to Reduce Fire Hazard:</p> <ul style="list-style-type: none">Employee Awareness Training on all of the topics belowFire Prevention, Suppression and Emergency Preparedness:<ul style="list-style-type: none">During periods of high fire danger potential sources of fire ignition (vehicle exhaust systems, cigarettes, matches, propane torches, sparks from various hot work operations, etc.) must be used with extra precaution.Prior to performing hot work (anything that creates a spark or an open flame is considered hot work), fire suppression equipment must be immediately available, hot work must only be done on road or turbine pad surfaces cleared of vegetation, and the on-site Safety Supervisor must be notified.During construction, a water truck would be on-site to keep the ground and vegetation moist during extreme fire conditions.Prior to start of construction work activities, contact the local fire department(s) and advise them of work type, location, and probable duration. Maintain open communication with local fire district personnel to identify and address fire hazardsKeep emergency firefighting equipment on-site when potentially hazardous operations are taking place.Conduct welding or metal cutting only in areas cleared of vegetationVehicles:<ul style="list-style-type: none">Plan and manage the work and the movement of vehicles. No off-road driving is to be done while working alone.Prohibit construction workers from parking vehicles in areas of tall dry vegetation, to prevent fires caused by contact with hot mufflers or catalytic convertersEach vehicle used on-site shall have a fire extinguisher of sufficient type and capacity to suppress small fires around vehicles. Vehicle occupants shall be familiar with the location of these fire extinguishers. All employees who may have a need to use a fire extinguisher shall be current in their training on the general principles of fire extinguisher use and the hazards involved with incipient stage firefighting.	<ul style="list-style-type: none">The general contractor would be responsible for identifying and marking the path for all off-road vehicle travel.All off-road vehicle travel is to stay on the identified path.In the event a vehicle gets stuck, shut the engine off. Periodically inspect the area adjacent to the exhaust system for evidence of ignition of vegetation. Do not "rock" the vehicle to free it; rather, pull it out. Inspect the area after the vehicle has been moved.In tall grass (i.e., tall or taller than the exhaust system of the vehicle[s]), pre-wet the area with water prior to driving on it with vehicles <ul style="list-style-type: none">Fueling<ul style="list-style-type: none">The general contractor would designate a location for field fueling operations at each construction yard. Any fueling of generators, pumps, etc., shall take place at this location only.Fuel containers, if used, shall remain in a vehicle or equipment trailer, parked at a designated location alongside county rights-of-way. No fuel containers shall be in the vehicles that exit the right-of-way except for one 5-gallon container that is required for the water truck pumpSmoking<ul style="list-style-type: none">Smoking shall only be allowed in the designated smoking areas of the Proposed facility.Emergency Notification and Follow Up<ul style="list-style-type: none">The following course of action should be taken if an emergency situation develops:<ul style="list-style-type: none">Evacuate as necessary. Maintain site security and control if possible. If crews are working at different areas of the site, a designated meeting location would be created for all people to gather.Notify proper emergency services (fire, ambulance, etc.) for assistance.Notify site management of any possible fires.Prepare a summary report of the incident as soon as possible after the incident. <p>II. Operational Fire Risk:</p> <p>The risks of fires during operation of the proposed facility would vary depending on the type of equipment operating. There is the potential for electrical fires from electrical equipment associated with the wind turbines, solar modules, transmission lines, and the lithium-ion batteries associated with the Battery Energy Storage System (BESS).</p> <p>Wind turbines: Potential risks of fire and health and safety risks could arise from improper maintenance, electrical malfunction, blade failure, structural and reliability concerns, ice throw, and risks to public providers of fire service during tower rescue events.</p> <p>Solar panels and BESS: Specific fire and safety risks associated with the operation of the battery energy storage system (BESS) include short-circuiting of electrical equipment which could</p>

Council Review of DPO/Comments

Section IV.N. Waste Minimization: OAR 345-022-0120 [DPO pages 273-279]

Construction:

- Waste and recycled materials would be hauled offsite to Columbia Ridge and Finley Buttes Landfills.

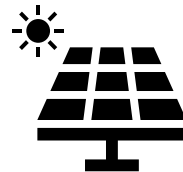
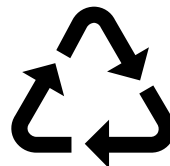
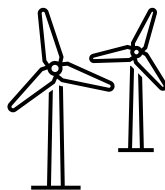
Recommended Waste Minimization Condition 1 (PRE): Require contractors to develop and submit Construction Waste Management Plan(s).

Recommended Waste Minimization Condition 3 (CON): During construction, on-site concrete washwater disposal is prohibited unless DEQ approval of a permit exemption for materials substantially similar to clean fill is obtained. If DEQ approval of a permit exemption is obtained, concrete washwater must be disposed of onsite via infiltration and evaporation in accordance with a DEQ-issued NPDES 1200-C permit.

Council Review of DPO/Comments

Section IV.N. Waste Minimization: OAR 345-022-0120 [DPO pages 273-279]

- **Recommended Waste Minimization Condition 4 (PRO):** Prior to operation of solar facility components, the certificate holder shall develop a Solar Panel Recycling Plan or protocol requiring that damaged or nonfunctional panels be recycled...
- **Recommended Waste Minimization Condition 6 (OPR):** During operation of wind facility components, the certificate holder shall ensure its third-party contractors reuse or recycle wind turbine blades, hubs and other removed wind turbine components, to the extent practicable. The certificate holder shall demonstrate that the recycling or disposal facility selected to receive turbine parts is licensed.



Council Review of DPO/Comments

Section IV.P. Division 24 Standards [DPO Pages 279-301]

IV.P.1. Public Health and Safety Standards for Wind Energy Facilities:

OAR 345-024-0010 [DPO pages 279-285]

- Impacts to the health and safety of the public from the construction and operation of the wind turbines could include structural, mechanical failures, electrical fires, or fire caused by lightning. Other potential impacts to the public from the construction and operation of the facility include structural failure risks such as a collapsed turbine towers (tower failure) or thrown blades.
- This standard also requires the applicant to demonstrate that it can operate the facility to prevent structural failures and have safety devices and testing procedures to avoid such failures.

Recommended Public Health and Safety Standards for Wind Facilities Condition 1 (OPS): During operation, the certificate holder shall develop and implement an operational safety-monitoring program that includes regular inspections, maintenance, and reporting program.

Council Review of DPO/Comments

Section IV.P. Division 24 Standards [DPO Pages 279-301]

IV.P.1. Public Health and Safety Standards for Wind Energy Facilities:

OAR 345-024-0010 [DPO pages 279-285]

Excluding Public Access from Proximity to Wind Turbines and Electrical Equipment

- The Department recommends that, for the wind energy facility components, the applicant has demonstrated that it can design, construct, and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment because the proposed facility is largely located on private lands and the applicant proposes design measures, such as fencing and gates that would sufficiently exclude the public from accessing the wind turbines and other electrical equipment.



Council Review of DPO/Comments

Section IV.P. Division 24 Standards [DPO Pages 279-301]

IV.P.2. Cumulative Effects Standard for Wind Energy Facilities: OAR 345-024-0015 [DPO pages 285-293]

Requires the applicant to design and construct the facility to reduce cumulative adverse environmental effects:

- Using existing roads to provide access to the facility site; minimize the amount of land used for new roads
- Using underground transmission lines and combining transmission routes
- Connecting the facility to existing substations; minimize new substations
- Designing the facility to reduce the risk of injury to raptors or other wildlife near turbines or electrical equipment
- Designing the facility to minimize adverse visual features.
- Use the minimum lighting necessary for safety and security purposes

The standard is limited to environmental effects that an applicant is capable of reducing and does not require the Council to find that a wind energy facility would have no cumulative environmental impacts.

Council Review of DPO/Comments

Section IV.P. Division 24 Standards [DPO Pages 279-301]

IV.P.2. Cumulative Effects Standard for Wind Energy Facilities: OAR 345-024-0015 [DPO pages 285-293]

Recommended Cumulative Effects Standard for Wind Energy Facilities Condition 2 (PRE): Prior to construction, the certificate holder shall:

- a. Evaluate existing roads on private property and use existing roads to the maximum extent practicable for construction and operation; and
- b. Provide to the Department a map set illustrating the location of new roads used for construction and operation of the facility. Maps shall illustrate the locations of:
 - i. New roads
 - ii. Wetlands or waters of the state;
 - iii. Category 1 through Category 5 habitats;
 - iv. Active agricultural lands and property boundaries.



Council Review of DPO/Comments

Section IV.P. Division 24 Standards

IV.P.3. Siting Standards for Transmission Lines: OAR 345-024-0090 [DPO page 293-301]

The proposed facility includes the following transmission lines:

- 6.8-mile, single circuit 230-kV Substation Connector transmission line;
- 25.3 miles of 230 kV UEC Cottonwood transmission line, of which:
 - approximately 8.4 miles would be a new single-circuit 230-kV transmission line,
 - approximately 9.6 miles would replace an existing 12.47-kV distribution line with a 230-kV transmission line and distribution underbuild, and
 - approximately 7.3 miles would upgrade an existing 115-kV UEC transmission line to a double-circuit 230/115-kV line with 12.47-kV underbuilt distribution;
- 5 miles of 230 kV/115 kV BPA Stanfield transmission line, of which approximately 3 miles would parallel an existing 230-kV transmission line;
- 9.1 miles of aboveground 34.5 kV electrical collector lines for wind and 5.5 miles of 34.5 kV aboveground collector lines for solar.

Council Review of DPO/Comments

Section IV.P. Division 24 Standards

IV.P.3. Siting Standards for Transmission Lines: OAR 345-024-0090 [DPO page 293-301]

Table 21: Overhead Electric Field Results

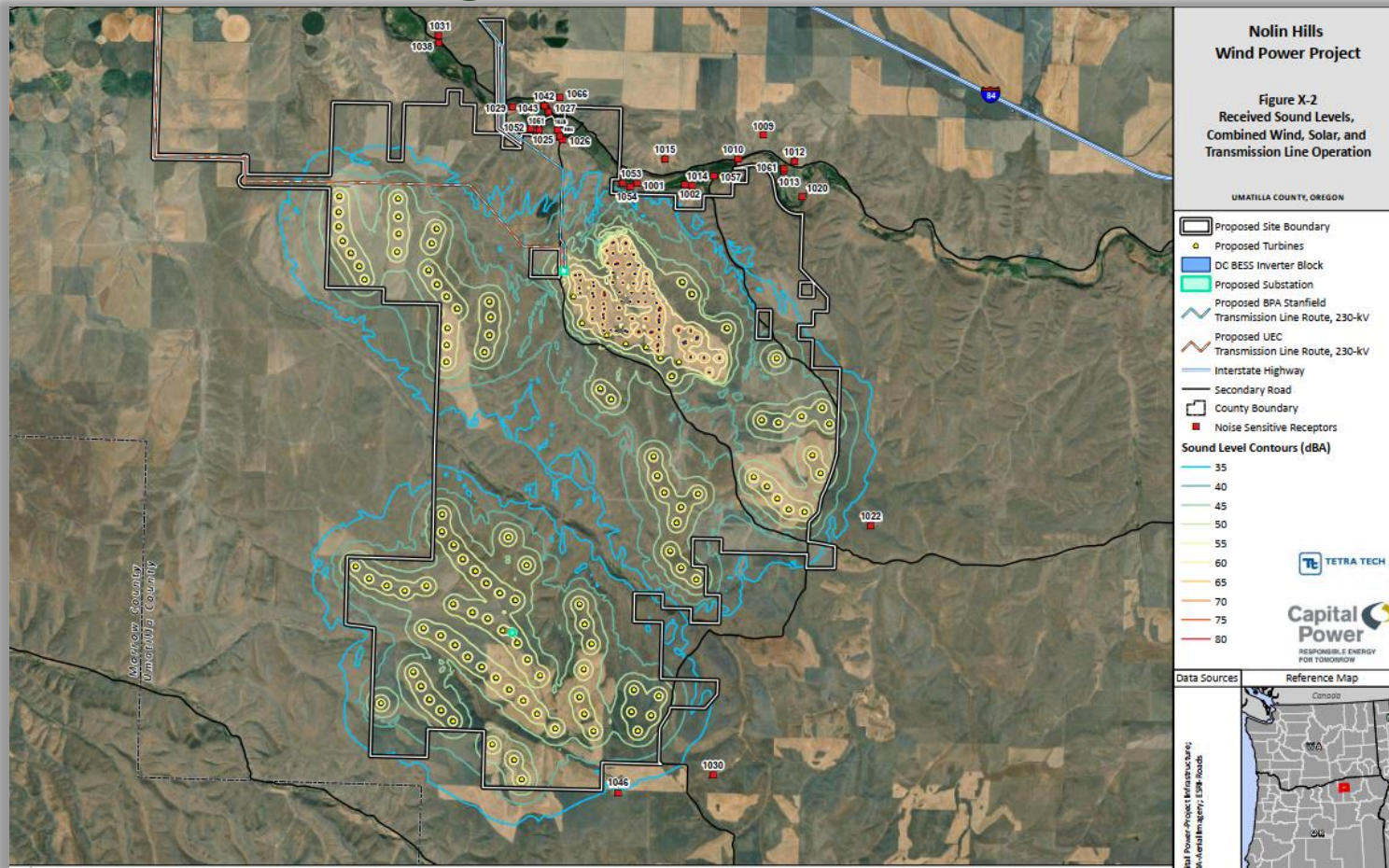
230 kV Transmission Line	Electric Field (kV/m)		
	Left Side	From Centerline	Right Side
230-kV/115-kV Double Circuit UEC Cottonwood Line	0.052	4.26	0.061
230-kV Single-Circuit Substation Connector	0.042	3.22	0.044
230-kV Single-Circuit Stanfield to BPA Substation	0.046	3.18	N/A
Below 9 kV/m limit (yes, no?) =	Yes	Yes	Yes

Because all of these values are below the threshold of 9 kV/m at one meter above the ground surface in areas that are accessible to the public, the Department recommends Council find that the applicant has demonstrated compliance with OAR 345-024-0090(1).

Council Review of DPO/Comments

Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction [DPO pages 301-322]

IV.Q.1. Noise Control Regulations: OAR 340-035-0035 [DPO pages 301-312]



Council Review of DPO/Comments

Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction [DPO pages 301-322]

IV.Q.1. Noise Control Regulations: OAR 340-035-0035 [DPO pages 301-312]

Recommended Noise Control Condition 1: Prior to construction, the certificate holder shall provide to the Department:

- a. Information that identifies the final design locations of all facility components
- b. The maximum sound power level for all noise generating facility components
- c. The results of the noise analysis of the final facility design
- d. For each noise-sensitive property where the certificate holder relies on a noise waiver to demonstrate compliance in accordance with OAR 340-035-0035(1)(b)(B)(iii)(III), a copy of the legally effective easement or real covenant pursuant to which the owner of the property authorizes the certificate holder's operation of the facility to increase ambient statistical noise levels L10 and L50 by more than 10 dBA at the appropriate measurement point.

Recommended Noise Control Condition 2: During operation, the certificate holder shall maintain a complaint response system to address noise complaints.

Council Review of DPO/Comments

Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

IV.Q.2. Removal-Fill [DPO pages 312-318]

- Based on the applicant's desktop and field wetland delineation methods, the applicant identified 78 waterways, 21 wetlands, and 2 ponds within the study area. The Oregon Department of State Lands (DSL) issued concurrence on the identification, delineation and jurisdictional designation of 27 wetlands and WOS.
- Approximately 549 acres associated with the 230 kV transmission lines not surveys due to access issues.



Council Review of DPO/Comments

Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

IV.Q.2. Removal-Fill [DPO pages 312-318]

Recommended Removal Fill Condition 1 (PRE): Prior to construction of the 230 kV transmission line, the certificate holder shall conduct field delineation surveys to identify any potentially jurisdictional wetlands or waters of the state. If, based on the field delineation surveys conducted per construction activities would result in 50 cy or more of removal-fill, submit the field delineation report to DSL and the Department.

Recommended Removal Fill Condition 2 (PRE): Prior to construction of facility components within the wind micro-siting area, the certificate holder shall provide the Department maps and GIS data showing the final design/layout and location of jurisdictional wetlands and waters of the state and demonstrate that facility components are at least 50 feet or more from any of the jurisdictional wetlands and waters of the state, or verify that less than 50 cy removal/fill needed, or seek a removal/fill permit through EFSC.



Council Review of DPO/Comments

Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

IV.Q.3. Water Rights [DPO pages 318-322]

Table 26: Construction Period and Daily Worst-Case Construction-Related Water Use

Project Component/Task	Water Usage (gallons)	
	18-Month Construction Period	Daily
<i>Concrete Foundations</i>		
Wind Turbines	2,016,000	4,667
Meteorological towers	2,500	6
Substation	24,000	56
O&M building	10,000	23
Battery energy storage system	65,000	150
Solar racking posts	77,000	178
Solar Inverter/transformer pads	5,120	12
Subtotal =	2,199,620	5,091
<i>Compaction and Dust Control</i>		
Road construction	10,560,000	24,444
Dust control	58-87,500,000	134-202,546
Subtotal =	98,060,000	226,990
Total =	100,259,620	232,081

Source: NHWAPPDoc2-14, ASC Exhibit O, Table O-1 and O-2. 2022-01-31.

Council Review of DPO/Comments

Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

IV.Q.3. Water Rights [DPO pages 318-322]

Construction water obtained from the cities of Pendleton, Hermiston and Echo Water Departments under existing water rights.

Operational water obtained from an on-site well for the O&M building and from the cities of Hermiston, Pendleton, or Echo under existing water rights for water used for solar panel washing.

- **Recommended Water Rights Condition 1-3** relate to confirming water use and whether a water right or transfer is needed, and **Recommended Water Rights Condition 4** ensures the operational well would not exceed 5,000 gallons of water use per day for the facility.



Council Deliberation

Adjourn

