BEFORE THE ENERGY FACILITY SITING COUNCIL OF OREGON

In the Matter of the Amendment of the Protected Areas, Scenic Resources, and Recreation Standards and Associated Rules.	Public Comments Received as of 5:00 pm on July 21, 2022

At its meeting on May 27, 2022, the Council initiated formal proceedings for the amendment of the Protected Areas, Scenic Resources, and Recreation Standards and associated rules. Staff issued a Notice of Proposed Rulemaking containing the proposed rules under consideration by Council on June 1, 2022.

The Notice of Proposed Rulemaking began a public comment period on the proposed rules. An opportunity for oral comments was provided at a rulemaking hearing on June 23, 2022. The Notice also established 5:00 pm on July 21, 2022, as the deadline for written comments. The Council will not consider comments provided after the deadline unless the comment period is extended for everyone.

This Document contains all written comments received on this rulemaking as of the deadline.

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From: kennedyjared1@everyactioncustom.com on behalf of Jared Kennedy <kennedyjared1@everyactioncustom.com>
Sent: Monday, July 18, 2022 9:03 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

---

Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

The review of an energy project can go on for years, longer than the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states,

…. "The site certificate or amended site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate or amended site certificate is executed" …

This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these land trusts and conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be determined by a single project. Ideally, a utility corridor would be designated in process determined by the legislature due to its significant impacts. Therefore, in lieu of that, I recommend that this provision of the rule be eliminated and that the analysis of the linear facility be conducted on its own merits per the rule and standards.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mr. Jared Kennedy
4216 NE 24th Ave Portland, OR 97211-6414 kennedyjared1@gmail.com

From: brian.evergreentree@everyactioncustom.com on behalf of Brian Kelly <brian.evergreentree@everyactioncustom.com>
Sent: Monday, July 18, 2022 10:00 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

I very much appreciate that Oregon is revising these rules for energy development.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Brian Kelly
1809 1st St La Grande, OR 97850-1601
brian.evergreentree@gmail.com

From: michelendickson@everyactioncustom.com on behalf of michele dickson <michelendickson@everyactioncustom.com>
Sent: Monday, July 18, 2022 2:24 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

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Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation

areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Ms. michele dickson
6031 SW Pendleton Ct Portland, OR 97221-1031 michelendickson@yahoo.com

From: rhettlawrence@everyactioncustom.com on behalf of Rhett Lawrence <rhettlawrence@everyactioncustom.com>
Sent: Monday, July 18, 2022 2:26 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

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The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

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Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mr. Rhett Lawrence
6445 N Commercial Ave Portland, OR 97217-2024 rhettlawrence@yahoo.com

From: ceili999@everyactioncustom.com on behalf of Katherine Bowman <ceili999@everyactioncustom.com>
Sent: Monday, July 18, 2022 2:36 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

I have done extensive environmental project work, and I note that the proposed rules DO NOT protect areas that were designated since May 2007 in any pending application.

Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, the ability of the Council ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate should be ensured.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

To do so is to expose every agency participating in the siting plan or work to extensive litigation, when up front planning could mitigate both the environmental issues and the costs of implementation and re-work after expensive litigation.

As has been pointed out in my reading, non-profits and private landowners with conservation easements have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails.

Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the

public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be given noticed and invited to be a “reviewing agency.”

My specialty in environmental project work included cumulative effects analysis. It's not that hard but often omitted or done inaccurately.

A linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is problematic for protected, scenic and recreation areas which contribute to local economic grouwth.

The decision to site one facility did not even contemplate a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Therefore, the Council must be as protective as possible in protecting our special resources for the sake of water, resources, and local economies as well as functioning ecosystems.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Ms Katherine Bowman
PO Box 945 Joseph, OR 97846-0945
ceili999@yahoo.com

From: jeannew@everyactioncustom.com on behalf of Jeanne Williamson <jeannew@everyactioncustom.com>
Sent: Monday, July 18, 2022 2:39 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

OUR PROTECTED AREAS ARE DESIGNATED AS PROTECTED FOR A REASON: They are fragile, they are diminished (and diminishing) in size, they are important for the health and life of the system within which we humans are a part.

HOWEVER THEY ARE NOT ACTUALLY PROTECTED because of the types of rules that allow development within the areas.

PLEASE WRITE RULES THAT WILL PROTECT THESE PROTECTED AREAS.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when

government fails. Under “Definitions” in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be “noticed” and invited to be a “reviewing agency.”

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Jeanne Williamson
5 Pine Crest Dr La Grande, OR 97850-1346 jeannew@evermine.com

From: msandrews77@everyactioncustom.com on behalf of Michael Andrews <msandrews77@everyactioncustom.com>
Sent: Monday, July 18, 2022 2:50 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mr. Michael Andrews
4388 SE 5th St Gresham, OR 97080-1806
msandrews77@gmail.com

From: gilesci@everyactioncustom.com on behalf of C Giles <gilesci@everyactioncustom.com>
Sent: Monday, July 18, 2022 3:07 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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Thank you,

Sincerely,
Ms. C Giles
804 O Ave La Grande, OR 97850-2237
gilesci@eou.edu

From: katalinplummer@everyactioncustom.com on behalf of Katalin Plummer <katalinplummer@everyactioncustom.com>
Sent: Monday, July 18, 2022 3:18 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects on these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit the Council's ability to consider impacts on protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation

areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic, and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Katalin Plummer
2586 Lauren Dr Ontario, OR 97914-5301
katalinplummer@gmail.com

From: bloustephenson@everyactioncustom.com on behalf of becky stephenson <bloustephenson@everyactioncustom.com>
Sent: Monday, July 18, 2022 3:44 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Ms. becky stephenson
1725 NW 7th St Bend, OR 97703-1768
bloustephenson@gmail.com

From: thinkski@everyactioncustom.com on behalf of Cathy Webb <thinkski@everyactioncustom.com>
Sent: Monday, July 18, 2022 4:02 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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We Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Ms. Cathy Webb
1708 Cedar St La Grande, OR 97850-1516
thinkski@gmail.com

From: carol2049@everyactioncustom.com on behalf of Carol Lauritzen <carol2049@everyactioncustom.com>
Sent: Monday, July 18, 2022 4:03 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review. The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application. This needs to change.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Carol Lauritzen
801 O Ave La Grande, OR 97850-2212
carol2049@gmail.com

From: marie.lyon@everyactioncustom.com on behalf of Christopher and Mari Lyon <marie.lyon@everyactioncustom.com>
Sent: Monday, July 18, 2022 4:10 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

We are specifically impacted by the proposed Boardman to Hemingway Transmission Proposal. It would not only ruin wild land behind our property, but increase the danger of wildfire through this rangeland. It would also destroy the viewshed of the whole valley below it. Idaho Power also wants to build roads through our precious agricultural land, when other access roads are available across BLM land.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

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Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Christopher and Mari Lyon
878 Coyote Gulch Rd Adrian, OR 97901-5304 marie.lyon@gmail.com

From: gbvalido@everyactioncustom.com on behalf of Gretchen Valido <gbvalido@everyactioncustom.com>
Sent: Monday, July 18, 2022 4:43 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Ms. Gretchen Valido
19681 Ridgewood Dr Bend, OR 97703-8550
gbvalido@yahoo.com

From: burntlemon@everyactioncustom.com on behalf of Helena Virga <burntlemon@everyactioncustom.com>
Sent: Monday, July 18, 2022 5:05 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Helena Virga
2679 Kincaid St Eugene, OR 97405-4121
burntlemon@gmail.com

From: msstev731@everyactioncustom.com on behalf of Matt Stevenson <msstev731@everyactioncustom.com>
Sent: Monday, July 18, 2022 5:11 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Matt Stevenson
1150 SE Sellwood Blvd Portland, OR 97202-5942 msstev731@gmail.com

From: carol9price@everyactioncustom.com on behalf of Carol Price <carol9price@everyactioncustom.com>
Sent: Monday, July 18, 2022 5:14 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Ms. Carol Price
1599 NW Lassie Ln Poulsbo, WA 98370-7164 carol9price@comcast.net

From: wintersnd@everyactioncustom.com on behalf of JOHN WINTERS <wintersnd@everyactioncustom.com>
Sent: Monday, July 18, 2022 5:26 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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Greetings, EFSC--- Given the likelihood of permanent and irrevocable damage to areas affected by most proposed developments, inconvenience to developers is not a valid reason to limit the Council's ability to honor current knowledge and law.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Dr. JOHN WINTERS
60214 Morgan Lake Rd La Grande, OR 97850-1345 wintersnd@gmail.com

From: Fishnspringers@everyactioncustom.com on behalf of Jack and Cindy Williams <Fishnspringers@everyactioncustom.com>
Sent: Monday, July 18, 2022 6:17 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Dr. Jack and Cindy Williams
4393 Pioneer Rd Medford, OR 97501-9643
Fishnspringers@gmail.com

From: maryjomannpdx@everyactioncustom.com on behalf of Mary Jo Mann <maryjomannpdx@everyactioncustom.com>
Sent: Monday, July 18, 2022 7:34 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Mary Jo Mann
2036 SE Lincoln St Portland, OR 97214-5432 maryjomannpdx@gmail.com

From: k.mdavis@everyactioncustom.com on behalf of Kim Davis <k.mdavis@everyactioncustom.com>
Sent: Monday, July 18, 2022 7:45 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Ms. Kim Davis
5455 Oakridge Ct SE Salem, OR 97306-8802 k.mdavis@yahoo.com

From: mazvirtar@everyactioncustom.com on behalf of Virginia Tarango <mazvirtar@everyactioncustom.com>
Sent: Monday, July 18, 2022 7:52 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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I love Oregon's wild spaces. They are habitat for so many living things and we have worked hard to protect them. I am concerned about the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Miss Virginia Tarango
2311 SE 34th Ave Portland, OR 97214-5717 mazvirtar@gmail.com

From: msnider01@everyactioncustom.com on behalf of Michael Snider <msnider01@everyactioncustom.com>
Sent: Monday, July 18, 2022 7:55 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Michael Snider
312 S 18th St La Grande, OR 97850-3459
msnider01@yahoo.com

From: marioman3@everyactioncustom.com on behalf of Andrew Simrin <marioman3@everyactioncustom.com>
Sent: Monday, July 18, 2022 8:10 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Sincerely,
Mr. Andrew Simrin
104 Maynard Ave Eugene, OR 97404-2841
marioman3@gmail.com

From: forbux@everyactioncustom.com on behalf of Susan Heath <forbux@everyactioncustom.com>
Sent: Monday, July 18, 2022 8:32 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Susan Heath
2552 Mount Vernon St SE Albany, OR 97322-8898 forbux@hotmail.com

From: wobobr123@everyactioncustom.com on behalf of William O'Brien <wobobr123@everyactioncustom.com>
Sent: Monday, July 18, 2022 10:18 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Mr. William O'Brien
12520 SW Gem Ln Apt 202 Beaverton, OR 97005-1360 wobobr123@yahoo.com

From: kskovlin@everyactioncustom.com on behalf of Kelly Skovlin <kskovlin@everyactioncustom.com>
Sent: Monday, July 18, 2022 11:07 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Ms Kelly Skovlin
1404 Walnut St La Grande, OR 97850-1437 kskovlin@gmail.com

From: squirel@everyactioncustom.com on behalf of Louise Squire <squirel@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 5:51 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Ms. Louise Squire
2105 Oak St La Grande, OR 97850-1736
squirel@eoni.com

From: patmckee@everyactioncustom.com on behalf of Patrick McKee <patmckee@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 6:37 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation

areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mr. Patrick McKee
9233 SE 59th St Mercer Island, WA 98040-5020 patmckee@sbcglobal.net

From: kayakkel@everyactioncustom.com on behalf of Kelly Smith <kayakkel@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 6:49 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

My appraisal is that the proposed rules DO NOT protect important lands and locations that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair and terrible policy to exempt pending applications from complying with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. Energy projects are one of the reasons why areas are designated as protected including any that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor has not place in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Kelly Smith
1727 SE Bronzewood Ave Bend, OR 97702-2316 kayakkel@gmail.com

From: jmfisherman9@everyactioncustom.com on behalf of John Milbert <jmfisherman9@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 8:08 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation

areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
John Milbert
1812 Jefferson Ave La Grande, OR 97850-2968 jmfisherman9@gmail.com

From: daniellefodor@everyactioncustom.com on behalf of Danielle Fodor <daniellefodor@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 8:10 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation

areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area.

Our wild lands are connected on the west coast. As wildfires, invasive species, and dwindline rainfall show -- what happens in one state affects the next, as Cascadia's ecosystem is connected. I used to live in California -- and I saw the effect of deforestation, air pollution, and poor forest management spread north, through Oregon, Washington, and British Colombia with increasing wildfires, less rain, and heat waves. The stakes have never been higher for all connected on the west coast to preserve the wildlands we have, and set new standards for energy developments, so that we protect the buffers of wild land and biodiversity The Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Danielle Fodor
94 E Horton St Port Hadlock, WA 98339-9644 daniellefodor@gmail.com

From: dennylassuy@everyactioncustom.com on behalf of Dennis Lassuy <dennylassuy@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 9:36 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

Time to get with it & update protection of sensitive areas (Protected, Scenic, and Recreational Areas") in perpetuity -- energy use is temporary; extinction is forever. Make us proud to be Oregonians by protecting our environmental values. I endorse the following sentiments:

"The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources."

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Dr. Dennis Lassuy
13131 NE Fremont St Portland, OR 97230-2820 dennylassuy@gmail.com

From: brandon.kokinos024@everyactioncustom.com on behalf of Brandon Kokinos <brandon.kokinos024@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 9:53 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation

areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Brandon Kokinos
1708 2nd St La Grande, OR 97850-1508
brandon.kokinos024@gmail.com

From: sodamtn@everyactioncustom.com on behalf of Dave Willis <sodamtn@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 10:02 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

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cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mr. Dave Willis
15187 Highway 66 Ashland, OR 97520-9439 sodamtn@mind.net

From: elizabethcdix@everyactioncustom.com on behalf of Elizabeth Dix <elizabethcdix@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 10:52 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

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cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Elizabeth Dix
5275 SW Chestnut Ave Beaverton, OR 97005-4256 elizabethcdix@gmail.com

From: 4cynthia.roberts@everyactioncustom.com on behalf of Cynthia Roberts <4cynthia.roberts@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 11:13 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Cynthia Roberts
3705 Baker St Baker City, OR 97814-2456 4cynthia.roberts@gmail.com

From: alexpbrown@everyactioncustom.com on behalf of Alex Brown <alexpbrown@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 11:13 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

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cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mr. Alex Brown
3746 SE Lafayette Ct Portland, OR 97202-1874 alexpbrown@gmail.com

From: avnovva@everyactioncustom.com on behalf of Jessica Valentín <avnovva@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 11:27 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

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The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

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areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Jessica Valentín
8023 SE Morrison St Portland, OR 97215-2364 avnovva@gmail.com

From: jjmd@everyactioncustom.com on behalf of Juanette Cremin <jjmd@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 11:43 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

Having grown up in the Midwest, where I have and visit family still, and then living for many years in both Colorado and Idaho, I have a clear perspective on the many things that make Oregon so special. We are blessed with amazing landscapes and natural environs. We have amazing wildlife communities, dependent on access to the forests, mountains, rivers, and lakes of the state. Typically Oregon elected officials are creative and forward thinking, at least those in other parts of the state.

The proposed rules DO NOT protect areas designated since May 2007 in any pending application! Given the potential for permanent and irrevocable damage to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit the Council's ability to consider impacts to protected areas still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

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Oregonians highly value our protected, scenic, and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Juanette Cremin
805 N Ave La Grande, OR 97850-2233
jjmd@eoni.com

From: mkcoosbay@everyactioncustom.com on behalf of Maureen Kelly <mkcoosbay@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 12:09 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Maureen Kelly
61062 Stackland Rd Cove, OR 97824-8214
mkcoosbay@yahoo.com

From: cjglaser@everyactioncustom.com on behalf of Carol Glaser <cjglaser@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 12:24 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Carol Glaser
2235 21st St Baker City, OR 97814-2441
cjglaser@frontier.com

From: ignacio927@everyactioncustom.com on behalf of Stacie Hall <ignacio927@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 12:32 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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Thank you,

Sincerely,
Ms. Stacie Hall
927 Clearbrook Dr Oregon City, OR 97045-3461 ignacio927@hotmail.com

From: chrysalis@everyactioncustom.com on behalf of Jill Wyatt <chrysalis@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 12:49 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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As a resident of Eastern Oregon for 23 years, I moved here for access to public land and protected areas with less crowds than the valley area and Bend/Redmond. I am concerned with expansive energy developments carving through remote Eastern Oregon seeming unabated, because of big money of big corporations backing them. The little guy and our public lands get trampled in the process.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

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Thank you,

Sincerely,
Ms. Jill Wyatt
905 Park St Baker City, OR 97814-1626
chrysalis@thegeo.net

From: jgold@everyactioncustom.com on behalf of Joel Goldstein <jgold@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 12:49 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Joel Goldstein
60836 Morgan Lake Rd La Grande, OR 97850-1363 jgold@eoni.com

From: sulinsky@everyactioncustom.com on behalf of Su Lin <sulinsky@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 3:30 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Thank you,

Sincerely,
Ms. Su Lin
1060 Horn Ln Eugene, OR 97404-2923
sulinsky@yahoo.com

From: mike_beaty@everyactioncustom.com on behalf of Michael Beaty <mike_beaty@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 4:56 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Sincerely,
Mr. Michael Beaty
47490 Slaughterhouse Rd Halfway, OR 97834-8071 mike_beaty@icloud.com

From: pamsbarlow@everyactioncustom.com on behalf of PAM BARLOW <pamsbarlow@everyactioncustom.com>
Sent: Tuesday, July 19, 2022 5:22 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
PAM BARLOW
64302 Mount Glen Rd La Grande, OR 97850-5170 pamsbarlow@gmail.com

From: Joel Rice
Sent: Wednesday, July 20, 2022 12:48 AM
To: EFSC Rulemaking * ODOE
Subject: Comment to EFSC Rulemaking

Categories: Tracked To Dynamics 365

To: Energy Facility Siting Council

Re: Formal Comment on Protected Areas Rulemaking

Date: July 19, 2022

I am a land conservationist. I grew up in rural North Carolina exploring the native hardwood forests and knowing almost every species of tree, shrub, forb, grass, mammal and bird. This early connection with nature had a tremendous positive influence on me; so that as an adult I vowed to protect 2000 acres of land from any form of development for the public good and future generations. After discovering my love for the landscape of northeast Oregon, I was able to begin implementing my dream in 1999 in partnership with ODFW and Rocky Mountain Elk Foundation. In 2001 we created a continuous wildlife corridor adjacent to Ladd Marsh comprised of ODFW land, private with conservation easement, and EOU's Rebarrow Research Forest. More recently I am working with Blue Mountain Land Trust to protect parcels acquired later, and I have joined the State Natural Areas Program in recognition of the special status plants, animals, and plant communities on the land. Of note are a series of moist meadows, including the best preserved mid-montane meadow in all eastern Oregon.

With that in mind, I sincerely hope this rulemaking will recognize the value of private landowners working with nonprofits and local, state, and federal governments to manage land in perpetuity for ecosystems and the public good.

It saddens me to read this antiquated rule (OAR 345-022-0040). The rule only includes protected areas on a list dated May 11, 2007. Now, years later, a developer may override my intentions, actions, and investments. Fifteen years is a long time to give a developer a head start! It's taken decades for me to purchase the parcels to create a continuous block of habitat, make the agency connections, and research the programs available to protect the special status plants, animals, and communities. Would not my intentions on my property be equal to or greater than a developer?

When I heard that rulemaking was occurring to update confusing and outdated language I had to comment. The rules come up short by declaring that the date an application is declared "complete" will be the new starting date and any areas protected after that, will not matter – even if an application is in progress. ORS 469.401(2), states that the starting date is when the site certificate is issued. The site certificate date is later in the process. This gives the developer enough time to review county records to determine if any lands they wish to develop are under conservation easement or designated Protected and plenty of time to contact the owner(s) to discuss.

Conservation easements should qualify as Protected Areas, even beyond the State Natural Areas program. Alternatively, since the Natural Areas program is not well known, they should reach out to private landowners who have special status plants, animals, and communities under conservation easement-- to educate them about program. Conservation easements are known as the best way for private landowners with significant high quality native habitat and rare species occurrences to protect their land. Information from Oregon Coalition of Land Trusts:
https://oregonlandtrusts.org/wp-content/uploads/2020/08/Conservation-Easements.pdf

On behalf of landowners throughout the state that have land in conservation easements and/or in the Natural Areas program, I applaud you for seeking us out in the initial noticing of any energy project. It is easy to contact the county to get landowner information and is done already within ODOE's formal noticing process per Exhibit F.

In closing I suggest the following:

1. Please notice all landowners (public, private and nonprofit) that own and/or manage lands subject to conservation easements or other protective status. Invite us to be a "reviewing agency" since we know our lands the best.

2. Be sure to add these conservation lands in your list of categories (the definition) of protected areas.
3. Eliminate any specific dates for execution or designation.
4. Do not exempt any pending applications; maintain the current law per ORS 469.401 (2).
5. All developers must comply with protections to areas designated at the time of their site certificate.

Thank you for taking public comment, especially from a landowner with a designated protected area. I would like to be informed of your decision and future development issues.

Joel Rice
59878 Glass Hill Road
La Grande OR 97850

From: florancejl@everyactioncustom.com on behalf of Jeannine Florance <florancejl@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 6:39 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation

areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Jeannine Florance
600 Modelaire Dr La Grande, OR 97850-1254 florancejl@gmail.com

From: curtisringstad@everyactioncustom.com on behalf of Curtis Ringstad <curtisringstad@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 7:29 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

Any habitat loss in the Anthropocene is unacceptable. "A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." It's that simple. Thank you.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Curtis Ringstad
600 Modelaire Dr La Grande, OR 97850-1254 curtisringstad@gmail.com

From: mathieuf.sc@everyactioncustom.com on behalf of Mathieu Federspiel <mathieuf.sc@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 7:36 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

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The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mathieu Federspiel
13506 SW Sego Lily Rd Powell Butte, OR 97753-1726 mathieuf.sc@gmail.com

From: annah_art@everyactioncustom.com on behalf of Annah Tubbs <annah_art@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 8:59 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Annah Tubbs
124 NW 4th Ave Ontario, OR 97914-2488
annah_art@yahoo.com

McDOWELL RACKNER GIBSON PC
419 SW 11th Ave, Suite 400 | Portland, OR 97205

JOCELYN PEASE
Direct (503) 290-3620
jocelyn@mrg-law.com

July 20, 2022

VIA EMAIL

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

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

Attention Rulemaking Coordinator:

Idaho Power Company ("Idaho Power" or the "Company") appreciates the significant work the Oregon Department of Energy ("ODOE") Staff, stakeholders, and the Council have put into this rulemaking proceeding, and has appreciated the opportunities ODOE Staff has provided for stakeholder input. Over the course of this rulemaking, Idaho Power has emphasized its concern regarding balancing the need to update the rules with minimizing disruption to Application for Site Certificate ("ASC") proceedings that are already far along in the review process. Idaho Power appreciates that ODOE Staff has considered this concern, and has made recommendations that appear to limit the potential for disruption. In particular, Idaho Power appreciates the comments in the July 8, 2022 Staff Report noting that, "[t]o avoid disruption of projects that are currently under review," the proposed rules "specify that amended standards will only be applicable to the review of applications or requests for amendment filed on or after the effective date of the rules." The proposed Division 22 rule revisions are clear on this point.[1] For added clarity and consistency, Idaho Power recommends that the Council extend the approach in the Division 22 rules to the other rule revisions being considered. Specifically, Idaho Power recommends that the Council add to proposed OAR 345-001-0010, OAR 345-020-0011, and OAR 345-021-0010 similar language regarding the applicability of the new rules as illustrated below:

[1] *See, e.g.*, Notice of Proposed Rulemaking Regarding Amendment of Protected Areas, Scenic Resources, and Recreation Standards and Associated Rule at 31 (May 27, 2022) (hereinafter "NOPR") (adding the following to OAR 345-022-0040: "(4) The Council shall apply the standard adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule.").

- General Definitions, OAR 345-001-0010(49): "(s) Consistent with OAR 345-022-0040(4), the Council shall apply the definition of "protected areas" included in the standard adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule."
- Notice of Intent, OAR 345-020-0011(1)(L): "(D) Consistent with OAR 345-022-0040(4), the Council shall apply the Notice of Intent provisions for Exhibit L included in the rule adopted under Administrative Order EFSC X-XXXX, filed and effective [DATE], to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule."
- Contents of an Application, Exhibit L, OAR 345-021-0010(1)(L): "(D) Consistent with OAR 345-022-0040(4), the Council shall apply the information requirements for Exhibit L included in the rule adopted under Administrative Order EFSC X-XXXX, filed and effective [DATE], to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule."
- Contents of an Application, Exhibit R, OAR 345-021-0010(1)(r): "(H): Consistent with OAR 345-022-0080(4), the Council shall apply the information requirements for Exhibit R included in the rule adopted under Administrative Order EFSC X-XXXX, filed and effective [DATE], to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule."
- Contents of an Application, Exhibit T, OAR 345-021-0010(1)(t): "(G) Consistent with OAR 345-022-0100(4), the Council shall apply the information requirements for Exhibit T included in the rule adopted under Administrative Order EFSC X-XXXX, filed and effective [DATE], to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule."

In the event the Council declines to adopt the proposed rule language provided above, Idaho Power respectfully requests that the Council provide added clarity of the Council's intent that the revisions to the rules regarding definitions, notice of intent, and ASC information requirements do not apply to currently pending projects and explain its rationale either in its rulemaking order or on the record during its deliberation.

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

Regards,

Jocelyn Pease

From: kmarch1961@everyactioncustom.com on behalf of Kevin March <kmarch1961@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 9:51 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

I saw this up close and personal when I read through parts of the B2H Draft Proposed Order. In a section I saw regarding Ladd Marsh in the Grande Ronde Valley, I was utterly dumbfounded by the actions of the Oregon Department of Energy.

ODFW stated that the viewshed from Hwy 30 in Ladd Marsh was the marsh and would be detrimentally affected by the power lines and access roads. ODOE, who seems to me should be working for the state, not Idaho Power, stated that the viewshed was Highway 30, not Ladd Marsh. This is ludicrous and exactly the reason we need more protections for our scenic areas. Once they are spoiled, they are gone for good.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the

land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under “Definitions” in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be “noticed” and invited to be a “reviewing agency.”

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Kevin March
206 Main Ave La Grande, OR 97850-1674
kmarch1961@gmail.com

From: amarch@everyactioncustom.com on behalf of Anne March <amarch@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 9:56 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

Most Oregonians value the natural beauty found in our state. However, mile by mile, natural areas have disappeared over the years. We need to find a way to stop the human footprint from growing, growing growing (spreading like a cancer). We need to do a better job, and the EFSC has an important role to play here.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Anne March
206 Main Ave La Grande, OR 97850-1674
amarch@eoni.com

From: houseoflara@everyactioncustom.com on behalf of Ramon Lara <houseoflara@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 11:26 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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Non-profit and private landowners have become the land managers filling the gap of protecting lands and species when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. The land management entity with jurisdiction over the protected areas within the study area must be "noticed" and invited to be a "reviewing agency."

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mr. Ramon Lara
2042 East St Baker City, OR 97814-2839
houseoflara@yahoo.com

From: ryoung@everyactioncustom.com on behalf of Ruth Young <ryoung@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 11:45 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

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Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Ruth Young
3060 Harris St Eugene, OR 97405-4225
ryoung@eou.edu

From: djkomlosi@everyactioncustom.com on behalf of David Komlosi <djkomlosi@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 12:57 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

---

Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over the protected areas (public, private or nonprofit) within the study area must be "noticed" and invited to be a "reviewing agency."

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Thank you,

Sincerely,
Mr. David Komlosi
906 Penn Ave La Grande, OR 97850-2218
djkomlosi@gmail.com

From: wberry429@everyactioncustom.com on behalf of Wanda Berry <wberry429@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 9:08 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Wanda Berry
2014 3rd St La Grande, OR 97850-2241
wberry429@gmail.com

From: marijee4@everyactioncustom.com on behalf of Ann Chetock <marijee4@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 9:13 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Mrs. Ann Chetock
6550 Guava Ct NE Salem, OR 97305-3743
marijee4@gmail.com

From: puttheshot@everyactioncustom.com on behalf of Kevin Weitemier <puttheshot@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 10:02 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Dr. Kevin Weitemier
3106 SW Doschdale Dr Portland, OR 97239-1156 puttheshot@hotmail.com

From: saelon@everyactioncustom.com on behalf of Saelon Renkes <saelon@everyactioncustom.com>
Sent: Wednesday, July 20, 2022 10:43 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Saelon Renkes
85060 Spencer Hollow Rd Eugene, OR 97405-9519 saelon@mac.com

From: kaylaksaager@everyactioncustom.com on behalf of Kayla Saager <kaylaksaager@everyactioncustom.com>
Sent: Thursday, July 21, 2022 6:45 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

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Thank you,

Sincerely,
Kayla Saager
53785 W Crockett Rd Unit 18 Milton Freewater, OR 97862-7961 kaylaksaager@gmail.com

From: jch_ranch@everyactioncustom.com on behalf of John Harvey <jch_ranch@everyactioncustom.com>
Sent: Thursday, July 21, 2022 9:25 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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The proposed B2H powerline project will cross our property creating unneeded danger of forest and grass fires, effect the birthing of elk in the path and create noise and visual negatives to our pristine property. The line will also reduce the value of our forest land by going across the center of the property while having negative effects on the land, erosion and intrusive weeds.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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Thank you,

Sincerely,
John Harvey
77647 N Loop Rd Stanfield, OR 97875-4544 jch_ranch@centurylink.net

Native Plant Society of Oregon

P.O. Box 902
Eugene, OR 97440

July 21, 2022

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

Re: Rulemaking for Protected, Scenic, and Recreation Areas

The Native Plant Society of Oregon is advocating for Protected status for all of Oregon's Natural Areas. Oregon is home to a diversity of unique and threatened habitats which often contain at-risk and rare plant species. The Natural Areas program was established by Oregon's legislature in 1979 as a way to protect high quality native ecosystems and rare plant and animal species. The program identifies properties with special status species owned by organizations or individuals who voluntarily agree to preserve Oregon's rare plants, animals, and native plant communities.

NPSO recommends that the list of State Natural Areas to be Protected should NOT be limited to those in place as of May 11, 2007, as the current antiquated rule (OAR 345-022-0040) reads. All properties in the Natural Areas program admitted at ANY time up until a Site Certificate is issued, should be Protected. Oregon's special status species are not replaceable. All properties admitted to the Natural Areas program must have a management plan in place to preserve these rare plant and animal species and unique priority plant associations. As such, these Natural Areas should be given top priority for protection from development and disturbance.

Concerning Linear Facilities, NPSO proposes the study of at least four alternative routes. Study of only two routes leads to unnecessarily impacting Protected Areas because options are limited. State Natural Areas should always be avoided, but conservation easements established to protect rare plants and animals should also be considered. Under OAR 345-020-0011 a developer finds and includes many details about properties to be impacted by a proposed facility. "Whether a property is under conservation easement" and the goals of the easement, is missing from the list. An energy developer should be able to amend their application at any time to incorporate less harmful alternatives.

Existing rule OAR 345-022-0040 is outdated in a way which could result in negative unintended long-term consequences for Protected Areas, including Natural Areas, established between May 11, 2007, and present (15 years). The rule needs to be updated and clarified rules applied to applications under review. Rule revisions are undertaken because problems are noticed during review processes. Revisions should be applied so that rules meet their intent in processes that take years to complete.

Oregon's Natural Areas program is designed to protect a full range of Oregon's natural heritage resources. These areas are to be used for scientific research, education and nature interpretation. Each of Oregon's Natural Areas is unique and has an important role to play as part of a state-wide network to conserve Oregon's rare native species and priority native plant communities. The Native Plant Society of Oregon and many other partners have invested countless hours and large sums of money working to achieve conservation and restoration goals.

Sincerely,

Dan Luoma

Dan Luoma, President

541-737-8595
President@npsoregon.org

From: toddparaglide@everyactioncustom.com on behalf of Todd Weigand <toddparaglide@everyactioncustom.com>
Sent: Thursday, July 21, 2022 11:22 AM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

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I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Todd Weigand
404 N East St Joseph, OR 97846-8454
toddparaglide@gmail.com

From: martinandriener@everyactioncustom.com on behalf of Karen Riener <martinandriener@everyactioncustom.com>
Sent: Thursday, July 21, 2022 12:20 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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I use energy. However I would not want to use energy at the expense of losing protected, scenic and recreation areas. Because of this I have gone to the expense and effort of installing photovoltaic panels for my energy. I expect everyone to behavior responsibly so I expect the Energy Facility Siting Council to follow the law and retain the statutory requirements of ORS 469.401(2),

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Karen Riener
PO Box 333 Richland, OR 97870-0333
martinandriener@fastmail.com

From: summersowwinterweave@everyactioncustom.com on behalf of Margaret L Mead <summersowwinterweave@everyactioncustom.com>
Sent: Thursday, July 21, 2022 12:33 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

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The scenery and environment of the Grande Ronde Valley and other areas of Eastern Oregon are reasons many of us have chosen to live, work, and play here. It is of utmost importance that these resources are not ruined by a corporation's greed. Citizens have worked years to keep and often improve the scenic and recreation opportunities. The Protected areas are especially of value and it would be an atrocity to disregard them.

The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

Another concern that I would like to see improved in the proposed rules has to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements because they are being or have been designated and protected for the public interest. Furthermore, the land management entity with jurisdiction over

the protected areas (public, private or nonprofit) within the study area must be “noticed” and invited to be a “reviewing agency.”

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. The proposed rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. A utility corridor should not be placed in a protected, scenic or recreation area, period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
ms Margaret L Mead
57744 Foothill Rd La Grande, OR 97850-5212 summersowwinterweave@gmail.com

From: jondwhite418@everyactioncustom.com on behalf of Jonathan White <jondwhite418@everyactioncustom.com>
Sent: Thursday, July 21, 2022 2:03 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

Please ensure that when new rules, standards, and protected areas come into being, they will apply to all pending (and future) applications. It is unfair to exempt pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that the protection actually has meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, the review of an area eligible for a protective status can take a similar time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), which states that parties must abide by local ordinances, state law, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed. This is the law, and Council cannot adopt rules to the contrary.

I would hope that the bias of our public decision makers is to protect special resources. Once a resource has been subjected to development, it can never be the same again.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Jonathan White
485 Modelaire Dr La Grande, OR 97850-1252 jondwhite418@gmail.com

From: amorrison@everyactioncustom.com on behalf of Anne Morrison <amorrison@everyactioncustom.com>
Sent: Thursday, July 21, 2022 2:49 PM
To: EFSC Rulemaking * ODOE
Subject: I am writing to you today regarding a very important issue

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Categories: Tracked To Dynamics 365

Dear EFSC Rulemaking,

I am very concerned about the expansive energy developments being sited across the state and in my region. In response to your request for public comment on the proposed amendments to Protected, Scenic, and Recreation Areas' siting rules and standards, please accept the following suggestions which I believe will improve the proposed amendments, and better protect our beloved resources.

I am writing as a concerned citizen. I know Oregon is updating its rules re Protected Areas, Scenic Resources, and Recreation Standards.

We are nearing a tipping point in regard to climate change. Across the world, we are finally seeing the changes that we have been warned about for decades. I believe that EFSC's new rules must include protection for our remaining open and undeveloped area and the corridors which connect The proposed rules DO NOT protect areas that were designated since May 2007 in any pending application! Given the potential for permanent and irrevocable effects to these areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are still pending or those areas receiving designation during the review of an energy project's application for a site certificate.

The Council needs to make sure that when new rules, standards, and protected areas come into being, they apply to all pending (and future) applications, without exempting pending applications from having to comply with current law. The public and designating agencies expect that when an area is designated as a protected area, that protection will actually have meaning. This includes energy projects that are currently under review.

While the review of an energy project can go on for years, equally as long--or longer--the review of an area eligible for a protective status takes time to be approved and designated. The only consistent and fair way to approach this is to follow the law and retain the statutory requirements of ORS 469.401(2), and not adopt illegal rules to the contrary.

I would like to see improved in the proposed rules to do with the growing trend of land trusts and conservation easements. Non-profit and private landowners have become the land managers filling the gap of protecting lands and species that are deserving of protections when government fails. Under "Definitions" in the proposed rule, the list of protected areas needs to be expanded to include these conservation easements.

My final concern is the lack of a cumulative impact assessment if a linear facility is permitted in a protected area. A utility corridor should not be placed in a protected, scenic or recreation area,

period.

Oregonians highly value our protected, scenic and recreation areas and we expect our public decision makers to honor those values, as they reflect our image as a state and our heritage. Therefore, the Council must be as protective as possible in protecting our special resources.

I hope that my comments are useful and that you will consider incorporating them in the final rules.

Thank you,

Sincerely,
Anne Morrison
1501 Cedar St La Grande, OR 97850-1425
amorrison@eoni.com

Energy Facility Siting Council July 21, 2022

c/o EFSC Rules Coordinator

Via email to EFSC.rulemaking@oregon.gov

Re: Protected Areas, Scenic Resources, and Recreation Resources Rulemaking

Dear Chair Grail and Council Members:

I am providing comments regarding areas in the current rules that have been interpreted differently by different hearings officers and the council as new members are added or that have been the subject of council interpretation due to being unclear. These definitions need to include rule language that allows the public to be informed of the intent of the council when applying the terms as they relate to how the protected areas and recreational standards are evaluated.

OAR 345-00l-0010 DEFINITIONS

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

COMMENT: The use of the terms “study area” and “analysis area” are very confusing. The definition provided in the above rule language provides no clear direction regarding how, who, or under what circumstances the “analysis area” it is to be determined, and requires no justification regarding why a reduced analysis area is being allowed in the proposed order. In many instances the “analysis area” is limited to the site when it is clear that the impacts extend significantly beyond the site. Some examples where the “analysis area” has been restricted to the site while impacts extend beyond that area: wetlands, blasting,

1. (20) "Existing corridor," as used in ORS 469.300 and 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the

transmission line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.¶

COMMENT: In the past, this term did not cause concern regarding protected areas since no projects had been approved that allowed transmission lines to be run through protected areas. It is being proposed that a transmission line be allowed to pass through one of these areas for the first time. The "existing corridor" rules will currently allow the route through the protected areas to be treated as "energy corridors". This will mean that future utilities will be encouraged to follow the new route and the negative impacts can increase multiple times by different utilities absent consideration of the negative impacts on the protected resource. The definition should include language stating that an existing corridor through a protected area does not constitute an "energy corridor" for purposes of future developments."

COMMENT:

Council Rule language defining "land use approval" and which may be used by ODOE in error in deciding application of land use law.

COUNCIL RULE STATES:

"30) "Land use approval" means a final quasi-judicial decision or determination made by a local government that:¶

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;¶

(b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;¶

(c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;¶

(d) Applies the statewide planning goals to a proposed facility; or¶

(e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility"

OREGON STATUTE STATES

ORS 469.504 establishes a different procedure for council approval of site certificates when the local government has not determined compliance as noted below:

"(1)A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (Requirements for approval of energy facility site certificate) if:

(a)The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b)The Energy Facility Siting Council determines that:

(A)The 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, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646 (Implementation of new requirement in goal, rule or statute);"

(B)For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide *planning goal is justified under subsection (2) of this section; or*

(C)For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

"(2)The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732 (Goal exceptions), the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

(a)The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;…….etc.

COMMENT:

The Oregon Rule regarding evaluation of compliance with Land Use goals has been interpreted as allowing the council to determine eligibility based upon the plain language of the statute used by counties which conflicts with state statutes in the following manner:.

1. The Counties are not able to determine eligibility by using the language of the statute directly as the interpretation of the rules has been developed and changed through litigation results. When the Council has applied the county rules, they have not included compliance with the court decisions directing how to address protected areas or recreation areas under the rules regarding county determinations.
2. The process that must be used by the Council is defined in statute and the language of the above definition is not consistent with the language in the statute.

2. (49) "Protected Area" means an area designated for protection under federal or state law as one or more of the following:¶
    a. (a) A national park or other unit of the National Park System described under 54 U.S.C. 100501;¶
    b. (b) A national monument established under 54 U.S.C. 320201 or an act of Congress;¶
    c. (c) A wilderness area established under 16 U.S.C 1131 et seq.; ¶
    d. (d) A wild, scenic, or recreational river included in the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.;¶
    e. (e) A national wildlife refuge included in the National Wildlife Refuge System described under 16 U.S.C. 668dd;¶
    f. (f) A national fish hatchery established under 16 U.S.C. 760aa;¶
    g. (g) A national recreation area, national scenic area, or special resources management unit established by an act of Congress;¶
    h. (h) A wilderness study area established under 43 U.S.C. 1782;¶
    i. (i) Land designated in a federal land management plan as:
        i. (A) An Area of critical environmental concern; ¶
        ii. (B) An Outstanding natural area;¶
        iii. (C) A Research natural area;¶
        iv. (D) An Experimental Forest or Range; or¶
        v. (E) A Special Interest Area;¶

vi. (f) A national fish hatchery established under 16 U.S.C. 760aa;¶

vii. (g) A national recreation area, national scenic area, or special resources management unit established by an act of Congress;¶

viii. (h) A wilderness study area established under 43 U.S.C. 1782;¶

ix. (i) Land designated in a federal land management plan as:¶

1. (A) An Area of critical environmental concern; ¶
2. (B) An Outstanding natural area;¶
3. (C) A Research natural area;¶
4. (D) An Experimental Forest or Range; or¶
5. (E) A Special Interest Area;¶

x. (j) A state park, wayside, corridor, monument, historic, or recreation area under the jurisdiction of the Oregon Parks and Recreation Department;¶

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

xii. (L) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;¶

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

xiv. (n) A state scenic waterway designated under ORS 390.805 to 390.925 and related adjacent lands

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

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

xvii. (q) An agricultural experiment station, experimental area, or research center established by Oregon State University under ORS chapter 567; or¶

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

COMMENT:

The introductory sentence references both federal and state designations, but the list (a) through (i) references only the “federal government” and the references are nearly all to federal law. If the rule is going to specify the federal law, it should also specifiy the state law providing protection for the resource.

The way the section is currently written, there will be ongoing arguments regarding whether the same or similar resources identified by the state should have the same protection as those recognized by the federal government.

3. I see no reference to scenic highways which provide recreational opportunities designated by ODOT. The requirement that the plain language of rules be used unless it is not clear leaves any statements that begins with "federal" or "state" to apply only to those protected by that agency.

   Oregon State University is not the only college which has established "experimental forests" and all such areas should be addressed as protected areas

4. (545) "Site boundary" means the perimeter of the ENTIRE site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.¶

   COMMENT

   i. There are instances when there are related facilities which are not included in the parimeter of the site as the plain language of the above definition implies. Instead, there are multiple small areas rather than one site for evaluation. It does not appear that this is the intent of the definition of the "site".
   ii. NEED TO DECIDE THE INTENT OF COUNCIL REGARDING THE PHRASE "PROPOSED BY THE APPLICANT" AND PROVIDE CLARIFICATION IN THE RULE. From the time the Council was formed and up until about 3 years ago, the term "proposed by the applicant" was interpreted to mean that the site included all areas of the development including all related and supporting facilities, temporary laydown and staging areas, etc. the applicant proposed to build or change in order to accommodate the development. During the contested case of Wheatridge Wind Energy, the interpretation was changed, and "proposed by the applicant" was reinterpreted to mean that the applicant could choose which parts of the development to include in the application and site certificate process. This interpretation has caused a significant amount of public frustration and anger due to the following:

1. The public questions why parts of the development are not being required to meet the council standards or be included in any cumulative impact decisions.
2. No notice is provided to the residents who will be impacted at the time a decision is made regarding approval of the development.
3. Concern that in the event the area is later added as an amendment to the site certificate, that the public will not be provided access to a contested case procedure.
4. It is not clear that the areas not included will actually be evaluated for compliance with federal, state, local or city laws and rules.
5. T
6. he developer should not control the definition of what is included as related and supporting developments .
7. This interpretation fails to provide consistency in the definition of the "facility" for purposes of council actions.

5. (501) "Related or supporting facilities" as defined in ORS 469.300. The Council interprets the terms "proposed to be constructed in connection with" to mean that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. "Related or supporting facilities" does not include any structure existing prior to construction of the energy facility, unless such structure must be substantially modified solely to serve the energy facility.¶

6. (60) "Study area" means an area defined in this rule. **Except as specified in subsections (f) and (g),** the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:¶
    a. (a) For impacts to threatened and endangered plant and animal species, 5 miles.¶
    b. (b) For impacts to scenic resources and to public services, 10 miles.¶
    c. (c) For land use impacts and impacts to fish and wildlife habitat, one-half mile.¶
    d. (d) For impacts to recreational opportunities, 5 miles.¶
    e. (e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.¶
    f. (f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.¶

g. **(g) The distances stated in subsections (a) and (d) above do not apply to pipelines or transmission lines.**

COMMENT

MANY OF THE PROTECTD AREAS ARE DESIGNATED DUE TO THE UNIQUE VALUE THEY POSSESS REGARDING THREATENED AND ENDANGERED PLANT AND ANIMAL SPECIES AND THE RECREATIONAL USES MADE OF THE AREA. In particular, transmission lines pose hazards to wildlife such as multiple bird and bat species as well as reducing the value and desirability of recreational areas due to the substantial impact of the above ground components. The Protected Area standard is meaningless if there is no required area for evaluation of impacts to Threatened or endangered species and recreational uses of the area.

OAR 345-020-0011

f) Exhibit F. A list of the names and mailing addresses of property owners, as described in this rule:¶ (A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:¶ (i) Within 100 feet of property which the subject of the NOI, where the subject property is wholly or in part within an urban growth boundary;¶ (ii) Within 250 feet of property which is the subject of the NOI, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or¶ (iii) Within 500 feet of property which is the subject of the NOI, where the subject property is within a farm or forest zone;

COMMENT: The distances for identification of property ownership have been a concern to the public for a great deal of time.

1. Many people directly impacted by an energy development receive no notice that this may occur and may not read it in the news or other places it is posted.
2. The notice requirements should be tied to the distance that impacts can potentially be significant under one of the EFSC rules.
3. State agencies are required to notify individuals who are impacted by a development with specific information regarding impacts of the development and many of the impacts occur beyond the maximum 500 feet of property where development is planned.

I focused on the issues related to the definitions in these rules as they impact the application of all the remaining language of these rules. I am incorporating into my comments those of the STOP B2H COALITION of which I am a member rather than repeat them here.

Please consider clarifying the definitions above to assure consistent interpretations of the council standards as the council and legislature intend them to be applied.

Irene Gilbert

2310 Adams Ave.

La Grande, Or 97850

Email: ott.irene@frontier.com

Portal Comments 2022-24, 2022-25, 2022-26

From: Krystyna U Wolniakowski, Columbia River Gorge Commission

Rule: OAR 345-001-0010(52)

The Columbia River Gorge National Scenic Area was created by Congress in 1986 as the largest National Scenic Area in the U.S. spanning 85 miles of the Columbia River and covering 292,500 acres in Oregon and Washington. The Gorge Commission was created by bi-state compact in 1987 to manage the protection of scenic, natural, cultural and recreation resources as per the NSA Act. As such, the Gorge Commission should be included as a reviewing agency since we do not fit as a state nor federal agency, but have all the responsibilities of managing the resources in the NSA, superceding state authority on resource protection. The Forest Service works with the Gorge Commission and oversees the federal lands in the NSA, and the Gorge Commission oversees all the other lands and permits development along with the counties in the NSA. We recommend you add letter (s) to include a public agency (not identified in the list) that manages a protected area within the study area .

Rule: OAR 345-021-0010

(1) (A) Please add "interstate, bi-state, regional" to the list of agencies and tribes with adopted management plans.
(1) (C)(v) Please add .....plumes, including changes in landscape character or quality

Rule: OAR 345-022-0080

(3) Please add " interstate, bi-state, regional" to the list of agencies with adopted management plans. The Gorge Commission has a management plan for the Columbia River Gorge National Scenic Area approved by the Gorge Commission and concurred with the Secretary of Agriculture for the National Scenic Area that implements the National Scenic Area Act to protect the scenic, natural, cultural and recreation resources of the Gorge in Oregon and Washington.

GHCC GREATER HELLS CANYON COUNCIL

July 21, 2022

Oregon Energy Facility Siting Council
c/o EFSC Rules Coordinator
Via email to EFSC.rulemaking@oregon.gov

Re: Protected Areas, Scenic Resources, and Recreation Resources Rulemaking

Dear Chair Grail and Council Members,

Commenter Stop B2H Coalition ("STOP" or "Stop B2H") is a nonprofit organization with over 900 individual members and 8 organizational members, representing thousands of additional individuals. STOP's mission is to stop the approval and construction of an unneeded 305 mile, 500 kv transmission line through Eastern Oregon and Western Idaho, thereby: protecting environmental, historical and cultural resources; preventing degradation of timber and agricultural lands and the Oregon National Historic Trail; promoting energy conservation and acknowledging the past decade's revolutionary developments in renewable energy, energy storage and distribution.

Commenter Greater Hells Canyon Council is a member of the Stop B2H Coalition. Greater Hells Canyon Council (GHCC) is a grassroots conservation organization founded in 1967 (as Hells Canyon Preservation Council) to stop Hells Canyon and the Snake River from being dammed. Not only did we stop the dam, our advocacy led to the creation of the Hells Canyon National Recreation Area. Our work now focuses on public lands management in the entire Greater Hells Canyon Region. We cover such diverse issues as logging, grazing, recreation, mining, species protection, wildlife connectivity, and more. Our mission is to connect, protect, and restore the wild lands, waters, native species and habitats of the Greater Hells Canyon Region, ensuring a legacy of healthy ecosystems for future generations.

Stop B2H has extensive practical experience with most of your rules and standards having been engaged in all the steps of the siting process as well as a contested case. In addition, STOP and GHCC collectively called "Commenters," are also part of a consortium of conservation organizations which has commented extensively in a separate letter on these rules. In the interest of efficiency, this comment letter is intended to supplement that consortium comment letter. Commenters request an agency response to each of the specific comments and recommendations below.

Commenters have been participating for 1.5 years in the informal rulemaking process; and we are happy to see it has finally moved to this formal and final stage. That said, we are concerned about the lack of improvement, or any proposed amendments in the rules, regarding the **scenic methodology analysis**. Actually, it is being put on hold. The scenic methodology is complicated and was holding up the rest of the outdated rule amendments. Hence, after all this time we appreciate and supported the Rules Coordinator and the Council for separating those amendments from the rest of this process with the promise to continue working on the scenic methodology amendment. We are eager to provide more input for improving the standards for scenic resources and scenic methodology and hope that issue will be resolved soon in future amendments.

Specific to these proposed amendments and sections of the applicable rules, Commenters respectfully offer the following additional comments and suggestions for improving the rules and protecting our special places.

1. Definitions: 345-001-0010

a. Protected Areas (49)

Commenters commend the Department on the proposed amendments under the Protected Areas definition, which proposes the change from an exclusive list of areas to a list of categories or designations of land that are protected. However, we feel strongly that one special category of protect area is still missing: i.e.: lands subject to conservation easements.

There has been a growing trend of land trusts and conservation easements[1] that should be included in the Council's definition of Protected Areas. These lands referred to as "lands

[1] ORS 271.715 (1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property."

subject to conservation easements,"[2] could be in private or public ownership (i.e.: public agencies, Indian tribes, nonprofit corporations like land trusts, and/or any combination of these).

Voluntary protection of land by owners who manage their acres as natural areas and employ conservation easements to ensure protection "into perpetuity" should be highly encouraged by the State of Oregon and the federal government. They also need a certain degree of certainty that their lands would be protected given the contribution they are making.

Currently 12% of the land in the USA is protected; private landowners, nonprofit land trusts and various public-private partnerships in the form of conservation easements are an important contribution toward reaching the goal of 30% by 2030[3].

The State of Oregon's Natural Areas[4] program (already included under this definition) fits perfectly with the "30 by 30" goal. Similar to this natural areas program, conservation easements designations should be included in the definition of protected areas because we believe that they are a growing and important designation for areas of special qualities; and inclusion now will reduce the need for frequent or additonal updating and amendments.

b. Reviewing Agencies (52)

To align with the proposed amendment definitions, including the additions mentioned above, the land management entity with jurisdiction over the protected areas (public, private, nonprofit, or tribal) within the study area must be "noticed" and invited to be a "reviewing agency." They are the most familiar with the areas and resources; therefore they are in the best position to review impacts and advise the Department.

With the exception of state agencies, it would be up to the manager, officer, agency, or authorized person, to participate as a reviewing agency -- or not. However, they should remain on the list. If electronic means of notification and communciation is permissable, there should be no additional burdens on developers, a concern expressed by the developers.

[2] Term used by Coalition of Oregon Land Trusts (COLTS). See also: https://sustainablefuture.osbar.org/section-newsletter/20113fall2duhnkrack/

[3] Last year, President Biden pledged the United States would conserve 30% of natural landscape by 2030; the initiative is called "30 x 30."

[4] ORS 273.581.

Furthermore, under sub-section (p) the local governmental jurisdictions (counties and cities) with protected areas within their jurisdiction should not be limited to reviewing conditions of impacts to "public services" only. Local jurisdictions have interests in addition to public services, for example tourism, economic development, and protection of their scenic and recreational resources as well. No other reviewing agency in the list has a condition or limitation on their participation therefore this clause should be removed:

> (p) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 ~~for impacts to public services~~

[Affected Rules: OAR 345-001-0010 Definitions: (49) and (52); and 345-020-0011(1)(k) and 345-021-0010]

c. Analysis Areas (2) and Study Areas (60)

Analysis areas and study areas are confusing in the rules and will remain problematic without amendment. The analysis areas are not specifically defined by rule; rather they are defined in a Project Order arbitrarily determined by staff who can be influenced by the developer and who are for the most part unaccountable to the public.

Commenters believe that analysis areas should be eliminated completely from these rules. Retain "study areas" which are clearly defined in the rules. This would lead to less confusion and more consistency among the three rules, be the most protective of special places, and simpler to administer.

This logic is consistent with the currently proposed Scenic and Recreation Area rule amendments. In these two rule amendments analysis areas *are eliminated* (see 345-022-0080 and 345-022-0100). There is not a reason to retain analysis areas within the Protected Area rule except to limit analysis which is contrary to the goal of protecting our special and protected resources. In addition, by aligning these definitions and their application, the amendments come closer to meeting a goal of this over-arching rulemaking project, i.e.: "rule clarity and consistency" among the three (related) rules.

However, if analysis areas continue to be used and retained in the rules they must: a) not be established until after the Notice of Intent and issuing of the First Project Order; and b) have a mechanism for land managers, reviewing agencies, and the public, to object or appeal the limitations in the analysis area. *[Affected Rule: OAR 345-001-0010 Definitions: (2) and (60)]*

d. Scenic and Recreation Areas

The proposed rules have no definitions for Scenic and Recreation Areas or Resources. Only Protected areas are defined. Since this rulemaking is also part of ODOE/EFSC's rulemaking

project to "clean up" the rules, reduce ambiguity, and to align the three rules as much as possible, we belive that scenic and recreation areas should also be defined under 345-001-0010.

2. Linear Facilities (transmission, pipelines)

The proposed rules allow linear facilities to be built in a protected area if "other reasonable routes or sites have been studied" and if the route through the protected area would "result in fewer adverse impacts to resources or interests protected by Council standards." There are two substantive parts to the siting of linear facilities that should be corrected--in addition to the wording changes proposed in our consortium's letter[5]. To make these rules more protective of Oregon's precious resources: studying comparative or alternative routes, and analysis of cumulative impacts when creating a corridor, need to be improved and added, respectively.

First, studying comparative routes, is problematic without strict conditions or requirements in selecting the alternatives which would yield meaningful comparative analysis for the Council's review. Commenters recommend including the following:

a) Selection of the additional route(s) for comparative analysis must be approved in advance of the application by ODOE, possibly at the first Proposed Order phase.

b) If a federal or state land management agency, a tribal or local jurisdictional entity, or other land management entity, has commissioned or executed an alternative routing study, that routing study must be included and considered as one of the "other reasonable routes."

c) Allow the conditions above to be appealed to the Council before an application is deemed "complete" and ready for review. *[Affected Rule: 345-022-0040(2)]*

Second, cumulative impacts protection do not apply when there is an existing transmission and pipeline of a defined size (in the current and proposed rules). In other words, the rule tries to keep the linear facilities in the same right of way. While this may sound reasonable on the surface, it is very problematic for protected, scenic and recreation areas. The decision to site one facility did not contemplate nor approve a second facility. The cumulative impact of applying this rule will create a de facto utility corridor. This cumulative impact is not taken into account and it must be.

A utility corridor should not be determined by a single project. Ideally, a utility corridor would be designated in process determined by the legislature due to its significant impacts.

[5] The words "reasonable" and "unsuitable" should be replaced with "practicable" and "not practicable," respectively.

Therefore, in lieu of that, Commenters recommend that this provision of the rule be eliminated and that the analysis of the linear facility be conducted on its own merits per the rule and standards. *[Affected Rule: 345-022-0040(3)]*

3. Environmental justice (EJ)

An EJ lens or filter shall be applied by all natural resources reviewing agencies per ORS 182.545. Oregon Department of Energy, a natural resource agency, must assess and consider the affects of their decisions on environmental justice communities. ODOE through its public advocate position shall reach out to these communities to assess the environmental burden on them. As proposed, there is no mention of EJ in the new rules. Often environmental burden is overlooked when analyzing environmental impacts. This must change. Directly encompassed within the definition of "significant," a condition central to the criteria for Council decision making, is the "affects to the human population…"[6] Therefore there are no excuses, and information on impacts and burdens to EJ communities must be provided in the Contents of Notice of Intent and the Contents of an Application. *[Affected Rules: 345-020-0011 and 345-021-0010]*

4. Rule execution and timeframes.

Finally, and at the risk of redundancy with our consortium's comments filed separately, the rules cannot be amended in a way inconsistent with the law. Given the potential for permanent and irrevocable effects to the areas, particularly Protected Areas, inconvenience to developers is not a valid reason to limit Council's ability to consider impacts to protected areas that are designated from 2007 to 2022, as well as those receiving designation during the review of a Project. The law is clear and the rules simply need to reflect that. The public's interest, and that of sensitive species and places of special environmental and historical qualities are best served by retaining the requirements of ORS 469.401, which requires a site certificate or amended site certificate to require both the Council and applicant to abide by local ordinances, state laws, and the rules of the Council in effect on the date the site certificate or amended site certificate is executed.

As you know, the review of a project can go on for many years; similarly the review of an area eligible for a protective status can also take years to be designated. These lands and resources are designated for a reason, i.e.: to protect Oregon's most important recreational opportunities, sensitive natural resources, scenic resources, and special places.[7] Commenters

[6] 345-001-0010(53)
[7] See also: ORS 460.010, 469.310, 469.402, 469.501, 469.503.

urge the Council to remain mindful of these values during all energy development reviews and siting decisions.

Commenters hope that our comments are useful and that you will consider incorporating them in the final rules, in addition to the rulemaking promised for the future (e.g.: scenic assessment methodology).

Thank you,

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July 21, 2022

TO: EFSC Rulemaking Staff

FROM: Diane Brandt, Oregon Policy Manager, Renewable Northwest
Jack Watson, Policy Director, Oregon Solar + Storage Industries Association

FILED ELECTRONICALLY

RE: Comments on EFSC Notice of Proposed Rulemaking on Protected Areas, Scenic Resources, and Recreation Standards and Associated Rules Filed May 27, 2022

Renewable Northwest is a regional, non-profit renewable energy advocacy organization based in Oregon, dedicated to the responsible development of renewable energy resources throughout the Pacific Northwest. Our members are a combination of renewable energy businesses and environment and consumer groups. The Oregon Solar + Storage Industries Association (OSSIA) is a trade association founded in 1981 to promote clean, renewable, solar technologies. OSSIA provides a unified voice of the solar industry; OSSIA members include businesses, non-profit groups, and other solar industry stakeholders.[1]

Renewable Northwest, OSSIA and a group of our members were actively engaged in the Protected Areas (OAR 345-022-0040), Scenic Resources (OAR 345-022-0080), and Recreation (OAR 345-022-0100) rulemaking and previously submitted comments in October 2021 and April 2022,[2] in addition to participating in and offering oral comments during rulemaking workshops and relevant EFSC meeting agenda items. We would like to offer the following comments on the proposed rulemaking notice dated May 27, 2022 (NOPR) to acknowledge the inclusion of some of our suggestions and to flag areas that could still benefit from clarification. Throughout the rulemaking process, our organizations have stressed the importance of creating certainty

[1] OSSIA would like to take this opportunity to note its previous engagement in discussions with EFSC staff on the small business and fiscal statements procedure of this rulemaking. OSSIA preserves the right to raise this issue on appeal.
[2] RNW and OSSIA joint comments can be found in EFSC Staff Report of April 22, 2022 Attachment 3

for development of renewable energy projects in Oregon and not creating undue administrative load for applicants and EFSC Staff through unclear processes. Some of the proposed changes in the NOPR add clarity to the process; however, there remain some changes that add potential uncertainty in the permitting process which we will address below.

Importance of EFSC and Clarity, Certainty in Process

This clarity and certainty is especially important given Oregon's ambitious clean energy mandate as set by HB2021 (2021), which also prioritizes realizing equal benefit for Oregonians from the transition to non-emitting electricity as much as possible. (ORS 496.A405) Meeting the 100% non-emitting electricity by 2040 mandate will require a significant build out of renewable energy projects to not only replace current emitting resources, but to also meet projected electricity demand increases as other sectors electrify, like industry, buildings, and transportation. As a state permitting authority, EFSC plays a key role in this transition, necessitating the need for a process that is both robust in review and efficient in process - as was set out in Governor Brown's Executive Order 20-04 (EO) which prioritized streamlining processes that are essential to decarbonization. This resulted in a much-delayed process review of EFSC, which we understand recently commenced. As EFSC plays a central role in Oregon's decarbonized future, the review to streamline the process should be completed before additional burdens are placed on applicants. Accordingly, we suggest that **this rulemaking should wait for the conclusion of the process review.** Regardless, we still appreciate the opportunity to offer suggestions to offer more clarity to the proposed rule updates.

Added Clarity, Still Need for Defined Bounds

Positive Changes, Tweaks in Statute References. We appreciate the clarity offered by setting clear timelines for Applications for Site Certificates or Requests for Amendments that are determined to be complete before the effective date of this rule. The inclusion of this effective date language adds certainty to the applicants who are currently in the process of obtaining a site certificate. We also appreciate the incorporation of suggestions to clarify language for example, the removal of the words "component of" and "potential addition to" in the definitions section. These changes help to solidify each protected area by removing ambiguity. For the same reason, we previously advocated inserting statutory citations to the definitions that did not have them and altering citations that were too broad. For example, the suggested amendment of 345-001-0010 (49) (p) includes a reference to ORS Chapter 496 and 506. While ORS 506 does contain references to state fish hatcheries, it also contains references to research facilities (ORS 506.201), which are likely outside the scope of this rulemaking. Similarly, ORS 496

is extremely broad and includes references to funds, inspection stations, permits, and compacts, which are beyond the bounds of Protected Areas. A proper citation in the definitions will help to prevent the administrative burden on applicants and clearly direct applicants to include the relevant protect areas rather than facilities that are beyond the scope of this rule.

Removing Analysis Area Mentions Worrisome. We continue to be concerned that the suggested amendment of 345-022-0080 and 345-022-0100 to remove reference to an analysis area for scenic resources and recreational opportunities impacts introduces significant uncertainty into the process. The proposed language is:

> 345-022-0080 (1) ~~Except for facilities described in section (2), t~~To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse ~~impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.¶ (2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a s~~visual impacts to significant or important scenic resources.¶
>
> 345-022-0100 ~~(1) Except for facilities described in section (2), t~~To issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities ~~in the analysis area as described in the project order.~~.¶

With this suggested formulation it is unclear if there are any parameters on how far away scenic resources could be to a project site. This has the potential to introduce additional analysis for the applicant and Staff as it is also unclear how these considerations will be included in the process and at what point further analysis could be required of the applicant. This open-ended nature of this framing creates uncertainty in the process. We acknowledge that impacts on visual resources and recreational uses could extend beyond the analysis area of a project site, however, the lack of reasonable limitations on the extent to which these "impacts" can be applied and lack of clarity on when this occurs in the process creates uncertainty and the potential for unreasonable administrative burden. **Clarification of the intent in removing the analysis area reference is needed to limit this uncertainty and potential increase to administrative burden**.

In addition to administrative burden, this change raises concerns around who bears the burden of proof for any impacts suggested for consideration outside of the analysis area as allowable by the above suggested changes. Does this burden fall to the applicant to prove the absence of impacts beyond the analysis area? Will this be clarified in guidance or future rulemaking? EFSC rules currently place the burden of proof on the applicant. OAR 345-021-0100(2). Requiring the council to find that a project is not likely to result in significant impacts to significant or important scenic resources or to important recreational opportunities without reference to an analysis area would therefore appear to require an applicant to bear the burden of introducing evidence to support such a finding. We understand that the specific evidentiary requirements set forth elsewhere in the draft rules do reference analysis areas; however, this does not resolve the problem but rather introduces an uncomfortable ambiguity into the draft rules. How is the council supposed to make findings that are not limited to the analysis area based on evidence that is limited to the analysis area?

Including an evidentiary based standard without geographic limits is unreasonable - if not impossible in practice. **Clarifications are needed on application of evidentiary burden** as the current discussion in rules is limited to burden on the applicant. Again, we acknowledge that visual and/or recreational use impacts could extend beyond the analysis area, however, without clarification of the language and intent, the removal of any limitations on how far away impacts must be considered vastly expands the legal and practical burden on the applicants and creates ambiguity in the standard, which could set up challenges in the future.

We had previously expressed strong disagreement to this change as it essentially renders the analysis area meaningless and potentially allows for additional required analysis after an applicant has completed their assessments for the project order. As the current statute does not have stated time limits on when these additional assessments can be required, it is possible that further analysis could be required until the site certificate is issued. This creates undue burden on the applicant and staff - something to which staff has stated the opposite, which is reasonable to consider incorrect. Allowing for this potentially interminable additional analysis is unreasonable and could significantly slow the permitting process - which is contrary to the goal of EO 20-04 to streamline processes important to decarbonization efforts[3] and undermines the State's efforts to meet its 100% clean energy mandates and mitigate the worst impacts of climate change.

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

Aiming for Efficiency, Support Oregon's Clean Energy Future

We appreciate the effort Staff has put into this rulemaking process and creating opportunities for public input and comments, and acknowledge the need to balance a variety of inputs from a broad group of stakeholders. We also support the overall goal to update rules and to "improve efficiency and effectiveness of Council's review processes and procedures by resolving ambiguity, lack of clarity, and inconsistency in rule."[4] While some of the updates do accomplish this, we have flagged some significant pieces which accomplish exactly the opposite by introducing more uncertainty into the EFSC process. We strongly encourage further clarifications as outlined above to help minimize this possibility. The important role that EFSC plays in Oregon's clean energy future is central and will only increase as we continue to move away from emitting electricity resources, we look forward to future opportunities to comment and work with EFSC on finding the balance of creating an efficient, certain process for all stakeholders and Staff.

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

NewSun ENERGY

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July 21, 2022

VIA EMAIL <EFSC.rulemaking@oregon.gov>

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

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

Dear Energy Facility Siting Council,

NewSun Energy ("NewSun") submits this letter regarding the Energy Facility Siting Council ("EFSC" or the "Council") Protected Areas, Scenic Resources and Recreation Standards Rulemaking (the "Rulemaking"). We appreciate the work and thought that the Council and the Oregon Department of Energy ("ODOE" or the "Department") and its staff ("Staff") have put into the Rulemaking, but maintain serious concerns about the purpose, intent, efficacy, and validity of the proposed rules.

First, and most importantly, we reiterate that this Rulemaking conflicts with the purpose and intent of the Governor's Climate Executive Order No. 20-40 (the "Executive Order") and the legislature's adoption of House Bill 2021 ("HB 2021"). The Executive Order directs the Department to *facilitate* achievement of greenhouse gas ("GHG") reduction goals, *prioritize and expedite* processes and procedures to *accelerate* reductions in GHG emissions, and *integrate climate change impacts* into planning, budget, investments, and policy making decisions.[1] HB 2021 requires vast and immediate changes to the state's power generation portfolio in order to meet the bill's Clean Energy Targets.[2] This Rulemaking runs counter to those urgent directives and goals by making renewable energy facility siting slower, more costly, and more burdensome. We strongly urge the Council to prioritize rulemakings that assist, rather than hinder, the state's climate goals.

Second, the list of protected areas proposed under OAR 345-022-0040 and OAR 345-001-0010(49) is overly broad and lacks adequate justification. The stated need for the Rulemaking explains that "new protected areas have been designated by the state and federal government, and many previously designated areas have been renamed, re-organized, or re-designated" and, therefore, the Rulemaking is necessary to "ensure that impacts to these new

[1] Office of the Governor, State of Oregon, Executive Order No. 20-04, *Directing State Agencies to Take Action to Reduce and Regulate Greenhouse Gas Emissions*, 5 (Mar. 10, 2020) ("Executive Order").
[2] ORS 469A.410.

areas and designations are addressed during the siting process[.]"[3] The NOPR also states that "changes to state law surrounding the protection of scenic resources and recreational opportunities have created a need for better accommodation of resources of statewide importance that are not otherwise located within a protected area."[4]

The Rulemaking takes a uniform approach to revising the regulations by removing all listed protected resources and inserting generalized statements of resources "established", "created", "designated" or "listed" under statutes and regulations implementing resource protection programs.[5] The problem with that approach is that the Department has proposed broad, generalized references to those statutes and regulations that capture resources that do not necessitate the type of protection established under EFSC's rules.[6] As a result, the NOPR and related materials fail to adequately and specifically identify the statutory authority for expanding these protections to locations that are not within designated protected areas.[7] To achieve the purpose and goals stated in the NOPR, the Rulemaking should have updated the lists of protected areas currently in OAR 345-022-0040(1) to include those "new protected areas" requiring protection under EFSC's rules. Instead, the Rulemaking inadvertently and unnecessarily expands the scope of protected areas, inserts new ambiguity into the regulations, and modifies the standards applicable to applicants seeking site certificates from EFSC without meeting the burden of justification for those changes required under the Oregon Administrative Procedures Act ("OAPA"). *See* ORS 183.335(2)(b).

Finally, the Rulemaking suffers from a critical procedural error. Pursuant to the OAPA, the NOPR must include a "statement of fiscal impact" which includes consideration of "the economic effect of the proposed action on the public, . . . utiliz[ing] available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected." ORS 183.335(2)(b)(E). "Small business" is defined as "a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees." ORS 183.310(10)(a). The OAPA does not delineate between small businesses currently affected or small businesses potentially affected by a rulemaking, and both must be analyzed. *See Fick v. Or. Dep't of Fish & Wildlife*, 269 Or App

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[3] Office of the Secretary of State, Notice of Proposed Rulemaking, *Amendment of Protected Areas, Scenic Resources, and Recreation Standards and Associated Rules*, 2-3 (May 27, 2022) ("NOPR").
[4] *Id.* at 1-2.
[5] *Id.* at 6-7.
[6] For example, the Rulemaking might protect things like buildings and research facilities under ORS 506.201 because the rules would include a "state fish hatchery" established under ORS Chapter 506 but that term is not defined in statute or under the Rulemaking. Another example: the NOPR proposes to list *every* experimental forest or range or special interest area under *any* federal land management plan, without identifying those areas specifically and analyzing whether protection from facility siting is necessary. ODOE, *Issues Analysis Document*, 20-21 (Apr. 8, 2022).
[7] *See* ODOE, *Responses to March 7, 2022 Request for Informal Comments*, 29, 32-33 (last visited July 21, 2022), https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2022-04-22-Item-C-Protected-Areas-Rulemaking-Staff-Report-Attachment-3-Public-Comments.docx.pdf (OSSIA and RNW comments noting ambiguity and inaccurate or inadequate statutory authority for new additions to the list of protected areas).

756, 766 (2015) (analyzing a small business impact statement of "small businesses affected or potentially affected" by a rulemaking).

The statement of cost compliance effect on small businesses must also include: (a) an estimate of the number of small businesses subject to the proposed rules and identification of the types of business and industries with small businesses subject to the proposed rule; (b) a brief description of the projected reporting, recordkeeping and other administrative activities required for compliance, including the cost of professional services; (c) an identification of equipment, supplies, labor, and increased administration required for compliance; and (d) a description of the manner in which the agency proposing the rule *involved small businesses in the development of the rule*. ORS 183.336(1).

The Oregon Court of Appeals has held that rules "adopted in violation of the applicable rulemaking procedures . . . as contemplated by ORS 183.335(2)(b)(E) and ORS 183.336" are invalid. *Oregon Cable Telecommunications Ass'n v. Department of Revenue*, 237 Or App 628, 638 (2010) (invalidating a Department of Revenue rulemaking on procedural grounds for failure to include a statement of the cost of compliance effect on small businesses affected pursuant to the OAPA). In that case, the Court reviewed legislative history and noted that the preamble to the bill expressed concerns "about the unnecessary and disproportionately burdensome demands that fall on small businesses as a result of uniform regulatory requirements." *Id.* at 641 (internal quotation and citation omitted).

The small business impact statement required pursuant ORS 183.336(1) must include statements of compliance with all four subsections (a) through (d), which are separated by an "and" not an "or". The Notice of Proposed Rulemaking states:

> These rules will apply to persons applying for an energy facility site certificate, which typically includes utilities, independent power producers, and energy developers. These persons could be subject to some increased costs, including administrative costs and the costs of professional services associated with conducting analyses for impacts to protected areas, scenic resources, and recreational opportunities. . . . No small businesses are expected to be subject to these rules. . . . Because small businesses are not expected to be affected, small business were not specifically consulted during the development of these rules.[8]

This analysis is non-compliant with the OAPA and constitutes procedural error invalidating the Rulemaking. First, the NOPR does not address ORS 183.336(1)(c) at all. Second, it erroneously assumes that "no small businesses" will be subject to the Rulemaking. There are currently Oregon small businesses, like Obsidian Renewables, that have pending or approved applications for site certificates before the Council. Other small businesses, including NewSun, are likely to seek site certificates from EFSC in the future. The NOPR makes an unjustified conclusion to the contrary that is unsupported by evidence, in violation of ORS 183.336(1)(a). The Rulemaking therefore also violates ORS 183.336(1)(d) because small businesses were not consulted during development of the Rulemaking. Finally, the Rulemaking fails to address ORS 183.336(1)(b) because it states only that affected persons "could be subject

[8] NOPR, at 2-3.

to some increased costs" related to analyzing impacts on protected areas, but does not identify or analyze projected reporting, recordkeeping and other administrative activities required for compliance, including the cost of professional services.

Small businesses like NewSun make decisions about how, when, and where to invest – whether that be in Oregon or in other states – based on state laws, regulations, and policies. Whether small businesses seek site certificates from EFSC is therefore a function of the rules that the Council chooses to adopt. Regulations like this Rulemaking that are bureaucratic and burdensome on small businesses push those businesses not to engage in seeking EFSC site certificates and to invest capital and resources out of state. The Department was required to analyze such effects on small businesses and failed to do so.

While we appreciate the intent of the Rulemaking, the existing rules provide adequate protection for areas of special interest and conservation in our state and, at most, should be updated to include new protected areas as stated in the purpose and intent of the NOPR. The Rulemaking as written creates new, ambiguous standards that will hinder renewable energy siting in conflict with legislative and executive directives. We request that the Council direct the Department to undertake further analysis of the specific "new protected areas" that need to be added to the list in existing regulations and propose a new Rulemaking accordingly. At minimum, the Department must comply with the small business impact analysis required under the OAPA before this Rulemaking may proceed.

Thank you for considering these comments.

Sincerely,

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NEWSUN ENERGY
myoklic@newsunenergy.net
971-978-7501

cc: Jake Stephens, NewSun Energy
Marie Barlow, NewSun Energy

July 21, 2022

Oregon Energy Facility Siting Council
c/o EFSC Rules Coordinator
Via email to EFSC.rulemaking@oregon.gov

Re: Protected Areas, Scenic Resources, and Recreation Resources Rulemaking

Dear Chair Grail and Council Members:

Friends of the Columbia Gorge, Oregon Wild, Oregon Natural Desert Association, Greater Hells Canyon Council, Stop B2H Coalition, Oregon Coast Alliance, Central Oregon LandWatch, Northwest Environmental Defense Center, Columbia Riverkeeper, 1000 Friends of Oregon, Audubon Society of Portland, WildLands Defense, WildEarth Guardians, Thrive Hood River, and Pacific Crest Trail Association (collectively, "Commenters") submit the following comments regarding the 2022 Protected Areas, Scenic Resources, and Recreation Resources Rulemaking.

Commenters are nonprofit public interest organizations, with more than 275,000 collective members and supporters, with strong interests in responsible energy generation and the proper implementation of state law governing the approval, construction, and modification of large energy facilities in Oregon.

Commenter Friends of the Columbia Gorge is a nonprofit organization with more than 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge.

Commenter Oregon Wild represents approximately 20,000 members and supporters who share Oregon Wild's mission to protect and restore Oregon's wildlands, wildlife, and waters as an enduring legacy.

Commenter Oregon Natural Desert Association (“ONDA”) is a conservation organization with a mission to protect, defend, and restore public lands, waters, and wildlife in Oregon’s high desert. With offices in Bend and Portland, ONDA represents more than 14,000 members and supporters in the state and from across the country.

Commenter Greater Hells Canyon Council is a nonprofit organization with approximately 1,000 members dedicated to connecting, protecting, and restoring the wild lands, waters, native species, and habitats of the Greater Hells Canyon Region, ensuring a legacy of healthy ecosystems for future generations.

Commenter Stop B2H Coalition is a grassroots organization of over 900 individuals and a growing number of member organizations dedicated to fighting the proposed B2H transmission line through Northeast Oregon in order to protect environmental, historical, and cultural resources.

Commenter Oregon Coast Alliance is a nonprofit organization with hundreds of members dedicated to the protection of the Oregon coast by working with coastal residents to create sustainable communities, protect and restore coastal and marine natural resources, provide education and advocacy on land use development, and adapt to climate change.

Commenter Central Oregon LandWatch is a nonprofit environmental watchdog and land use advocacy nonprofit organization located in Bend with over 700 members dedicated to defending Central Oregon's waterways, wildlife, farms, and forests and promoting vibrant and sustainable cities and towns.

Commenter Northwest Environmental Defense Center (“NEDC”) is a nonprofit organization with approximately 500 members. NEDC’s mission is to preserve and protect the environment and natural resources of the Pacific Northwest.

Commenter Columbia Riverkeeper is dedicated to protecting and restoring the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific. With over 16,000 members and supporters, Columbia Riverkeeper has an interest in EFSC safeguarding Oregon's protected areas and natural resources in the Columbia River basin from potential degradation by energy facilities.

Commenter 1000 Friends of Oregon is a nonprofit organization with several thousand members dedicated to working with Oregonians to enhance our quality of life by building livable urban and rural communities, protecting family farms and forests, and conserving natural areas.

Founded in 1902, Commenter Audubon Society of Portland (“Portland Audubon”) is a nonprofit conservation organization with more than 15,000 members whose mission is to inspire all people to love and protect birds, wildlife, and the natural environment upon which life depends. Through conservation advocacy, environmental education, and wildlife rehabilitation, Portland Audubon promotes the understanding, enjoyment, and protection of native birds, other wildlife, and their habitats.

Commenter WildLands Defense is a nonprofit organization with approximately 2,200 members dedicated to protecting and improving the ecological and aesthetic qualities of the wildlands and wildlife communities of the western United States for present and future generations.

Commenter WildEarth Guardians is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. WildEarth Guardians has more than 189,000 members and supporters across the American West, including many who reside in the State of Oregon. WildEarth Guardians maintains an office in Portland, Oregon. WildEarth Guardians' members regularly recreate throughout Oregon.

Commenter Thrive Hood River is a nonprofit organization with more than 2,000 supporters with a mission to protect Hood River County's farms, forests, special wild places and the livability of its cities and rural communities.

Commenter Pacific Crest Trail Association is a nonprofit organization with approximately 15,400 members dedicated to preserving, protecting, and promoting the Pacific Crest Trail.

Commenters have reviewed the proposed rules and will comment below on specific rules, including suggestions for revising and correcting several of the rules. These comments will refer to the April 2022 Oregon Department of Energy staff's Issues Analysis Memo ("ODOE Memo"), which summarized the staff's analysis of the rulemaking project. Implementing Commenters' suggested revisions and corrections below will achieve the substantive goals of the rulemaking. Pursuant to ORS 183.335(3)(e)(C), Commenters request an agency response to each of the specific comments and recommendations below.

1. The proposed definition of "Protected Area" will not adequately protect Oregon's special places and sensitive resources from the harmful effects of large energy projects.

Although the proposed definition of "Protected Area" would in some ways clarify and improve the Council's current rules, it still would fail to adequately protect Oregon's special places and sensitive resources from the harmful effects of large energy projects, would not achieve full cooperation with the Council's partner state and federal agencies, would in several instances downgrade existing protections, and would not achieve full compliance with the Siting Act and other applicable laws. Commenters and the public at large expect the Council to protect the general health, safety, and welfare of Oregon's citizens, including by protecting Oregon's most important recreational opportunities, sensitive natural resources, scenic resources, and special places as Protected Areas in full compliance with the Siting Act. *See, e.g.*, ORS 460.010, 469.310, 469.470, 469.501, 469.503. Accordingly, the definition of "Protected Area" should be improved to ensure consistency with applicable law, better align with the goals of the rulemaking, and more clearly identify the special places, resources, and values these rules are required to protect.

Multiple provisions of the Siting Act and other state laws govern the designation of Oregon's special places and resources as Protected Areas. Although many of these laws and rules

will be cited and applied below to specific categories of lands and waters, the Council should consider the following authorities as a backdrop for this discussion.

First, ORS 469.470(2) requires the Council to adopt "standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310." In turn, ORS 469.010(1) and (2)(c), respectively, require the Council to ensure that "future generations [will] not be left a legacy of vanished or depleted resources, resulting in massive environmental [and] social . . . impact," and require the Council to pay "special attention to the preservation and enhancement of environmental quality." In addition, ORS 469.310, which also governs the Council's rules, declares that "[i]n the interests of the public health and the welfare of the people of this state . . . it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state."

Next, multiple sections of the Siting Act, including ORS 469.310, 469.470, and 469.520, expressly require cooperation with other agencies. For example, ORS 469.310 requires the Council to "establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state." ORS 469.470(1) requires the Council to "[c]onduct and prepare . . . in cooperation with others . . . programs relating to all aspects of site selection." ORS 469.470(4) requires the Council to "[a]dvise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government and affected groups, in furtherance of the purposes of" the Siting Act. And ORS 469.520 requires "cooperation" among all state agencies, including EFSC, on their "activities and programs relating to energy," including rulemaking. Under all of these authorities, the Council is required to work together with state and federal agencies to establish protections in the Council's rules for the special places and resources that these agencies work to conserve and protect.

Furthermore, ORS 469.501 instructs the Council to "adopt standards for the siting, construction, operation and retirement of facilities," including on issues such as "[a]reas designated for protection by the state or federal government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas," the "[e]ffects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species," the "[i]mpacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties," the "[p]rotection of public health and safety," the "[i]mpacts of the facility on recreation, scenic and aesthetic values," and "[c]ompliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503."

Finally, ORS 469.503(4) requires the Council to ensure that its siting decisions "compl[y] with the statewide planning goals adopted by the Land Conservation and Development Commission," and ORS 469.504 similarly requires "compliance with the statewide planning goals." The statewide planning goals, in turn, require protection of many of the same sensitive and

unique resources found in Protected Areas, such as scenic resources, recreation resources, historic and cultural resources, natural resources, water resources, air quality, land resources, forest lands, agricultural lands, estuarine resources, coastal shorelands, beaches and dunes, and the Willamette River Greenway. *See* Goals 3–6, 8, 15–18.

Below, Commenters recommend several necessary revisions and corrections to the proposed rules that would reduce ambiguities and resolve oversights that, if not corrected, would leave important resources and places unintentionally (and in several cases unlawfully) unprotected. Commenters' recommendations will correct multiple omissions and unnecessarily narrow language in the proposed rules that, if adopted as proposed, would inadvertently exclude important geographic areas from protection, even though these areas warrant protection and in many cases either currently enjoy protection as Protected Areas or were likely intended to be designated as Protected Areas in the proposed rules. In several cases, the proposed rule language, if adopted, could confuse the public's understanding of EFSC's rules and their applicability, potentially resulting in costly litigation over the proper interpretations of their meaning. Commenters' suggestions below will protect vulnerable lands and resources and will result in forward-looking, statutorily compliant rules that should not need to be frequently updated in the future.

In addition, Commenters recommend the inclusion of several additional categories of lands and waters in the definition of "Protected Area." As currently proposed, the definition arbitrarily omits many state and federally protected places and resources that are just as deserving of protection as those already expressly included. Commenters' recommendations will correct these oversights and omissions and will provide the vital protections needed for these special places and resources, while bringing the definition of "Protected Area" into full compliance with applicable law and accomplishing the stated goals of the rulemaking.

a. Introductory Language in the Definition of "Protected Area"

The opening line of the proposed definition of "Protected Area" says that a Protected Area is "an area designated *for protection* under federal or state law." Proposed Rule 345-001-0010(49) (emphasis added). The phrase "for protection" in the definition is unnecessary, ambiguous, and may invite litigation over whether certain areas are in fact designated "for protection." Removing that unnecessary qualifier streamlines the definition and reduces potential confusion about which areas are meant to be designated as Protected Areas.

b. National Recreation Areas, National Scenic Areas, and Special Resource Management Units

Proposed Rule 345-001-0010(49)(g), which reads "A national recreation area, national scenic area, or special resources management unit *established by an act of Congress*" (emphasis added), is an instance where the proposed rules are unnecessarily specific and arbitrarily narrow. Not all national scenic areas are established by acts of Congress. Cape Perpetua Scenic Area is an example of a national scenic area in Oregon that was administratively established by the U.S. Forest Service ("USFS"), not by Congress. The language "established by an act of Congress"

should be removed from the proposed rule in order to ensure the continued protection of such administratively designated scenic areas that merit protection.

c. Wilderness Study Areas

Similarly, Proposed Rule 345-001-0010(49)(h), which reads "A wilderness study area established under 43 U.S.C. 1782," should not include the reference to 43 U.S.C. 1782. The citation to 43 U.S.C. 1782 only encompasses Wilderness Study Areas managed by the Bureau of Land Management ("BLM"), and not USFS-managed Wilderness Study Areas. Deleting the U.S. Code citation from the language is necessary to encompass USFS-managed Wilderness Study Areas.

d. Areas of Critical Environmental Concern, Outstanding Natural Areas, Research Natural Areas, Experimental Forests and Ranges, and Special Interest Areas

Proposed Rule 345-001-0010(49)(i), which begins with "Land designated in a federal land management plan as," should be changed to read "Federally managed land designated as" in order to reduce ambiguity and correctly cover the intended categories of lands.

Although most of the categories of designations that follow in this Proposed Rule are made by federal agencies, that is not always the case. For example, some Outstanding Natural Areas are designated by Congress, including the Yaquina Head Outstanding Natural Area. 43 U.S.C. 1783. Notably, the ODOE Memo (p. 20) specifically asserts that the Yaquina Head Outstanding Natural Area was meant to be included as a Protected Area. Correcting the language of the rule as recommended below would resolve this oversight and ensure that any Outstanding Natural Areas that may be designated by Congress in the future will be protected as well.

In addition to that issue, the term "federal land management plan" might be confusing, as agency planning is not always relevant to particular Areas of Critical Environmental Concern, Outstanding Natural Areas, Research Natural Areas, and other designations. Using the phrase "federally managed land" instead would remove any potential ambiguity as to whether these designations are actually "designated in a federal land management plan."

e. Outstanding Resource Waters

Commenters recommend including Outstanding Resource Waters ("ORWs") within the definition of "Protected Area." ORWs are Oregon's equivalent of the federal antidegradation policy's Outstanding National Resource Water ("ONRW") provision at 40 CFR 131.12(a)(3). ORWs are nominated by the Oregon Department of Environmental Quality ("DEQ") and designated by the Oregon Environmental Quality Commission ("EQC").

The ODOE Memo (p. 26) asserts that ORWs are not listed as "Protected Areas" in the proposed rules because areas expressly identified in OAR 340-041-0004(8)(a) as the DEQ's priorities for ORW nomination, such as National Wild and Scenic Rivers, State Scenic Waterways, and more, will likely already be included under another category in the Council's

definition of "Protected Area." However, while those areas may be priorities for ORW designation, they do not encompass all areas that may be designated as ORWs, now or in the future. Pursuant to OAR 340-041-0004(8), the only requirement for designation as an ORW is that the designated water must be a high-quality water, not that it must be located in one of the priority areas. Many high-quality waters in Oregon potentially deserving of future protection as ORWs fall outside of the priority areas.

Currently, Oregon has three designated ORWs. One of those areas, Waldo Lake, does not fall entirely within the priority areas and is not completely covered by the "Protected Area" definition in the Proposed Rule. Waldo Lake, a remote lake with waters renowned for its outstanding clarity, has exceptionally high water quality and merits protection, along with other ORWs that may be designated in the future and that also do not fall within any priority area.

ORWs need to be included as Protected Areas in order to comply with ORS 469.470(2), which requires the Council to adopt "standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310." In turn, ORS 469.010(1) and (2)(c), respectively, require the Council to ensure that "future generations [will] not be left a legacy of vanished or depleted resources, resulting in massive environmental [and] social . . . impact," and require the Council to pay "special attention to the preservation and enhancement of environmental quality." Furthermore, ORS 469.310 requires the Council's rules and siting decisions to achieve consistency with the "water . . . and other environmental protection policies of the state," and ORS 469.501(1)(c) directs the Council to determine how best to protect "[a]reas designated for protection by the state or federal government, including . . . scenic waterways."

Outstanding Resource Water designations require protection by the Council because these designations are made by the Oregon EQC specifically for the environmental protection of the designated waters. Additionally, including ORWs as Protected Areas will facilitate the Council's compliance with ORS 469.503(4), which requires the Council to ensure that its siting decisions "compl[y] with the statewide planning goals adopted by the Land Conservation and Development Commission." Goal 5 requires the preservation of "[s]ignificant natural areas that are . . . outstanding" and Goal 6 requires the protection of water quality, both of which require the Council to preserve Outstanding Resource Waters. OAR 660-015-0000(5), (6). With these requirements in mind, purposely excluding ORWs from the definition of "Protected Area" would be a shortsighted decision that would neither further any goals of the rulemaking nor comply with the Council's directives from the Legislature.

f. State and Federal Conservation Easements and Highway Scenic Preservation Easements

Commenters recommend including in the definition of "Protected Area" areas covered by conservation easements and highway scenic preservation easements held by the state and federal governments. These easements are agreements that permanently limit uses of land in order to protect its conservation values, and they are expressly authorized by state and federal law for conservation and scenic purposes. *See, e.g.*, ORS 271.715, 271.725.

State-held conservation easements are of a similar nature to state parks, waysides, and corridors (which are already proposed to be included as Protected Areas) in that they are areas that the State is entitled, encouraged, and required to preserve and protect indefinitely. In particular, protecting highway scenic preservation easements and other conservation easements held for scenic purposes will ensure compliance with ORS 469.501(1)(i), which instructs the Council to develop rules for protecting, among other things, "recreation, scenic and aesthetic values" from the "[i]mpacts of [energy] facilit[ies]." Without protection in the energy siting process, these easements can lose their value as a means of conserving sensitive and important areas.

Designating these areas as Protected Areas will also protect the natural, scenic, historic, and other resources that the Council is required to protect under ORS 469.503(4) and 469.504, which require compliance with Oregon's statewide planning goals, which in turn require the protection of the types of resources that may be lawfully protected by conservation easements, such as scenic resources, natural resources, water resources, forest lands, agricultural lands, estuarine resources, coastal shorelands, beaches and dunes, and the Willamette River Greenway. Moreover, Goal 5 *expressly encourages* the use of "easements" to protect natural resources, scenic resources, historic resources, and open spaces. OAR 660-015-0000(5). Under these statutory and regulatory directives, it is necessary to include easements acquired specifically by state and federal agencies for scenic and conservation purposes within the "Protected Area" definition.

In addition, designating state and federally held conservation easements will ensure compliance with ORS 469.501(1)(c), which instructs the Council to protect "[a]reas designated for protection by the state or federal government."

Finally, protecting conservation and scenic easements held by the federal and state governments will also facilitate compliance with the Council's mandatory obligations to cooperate with other state and federal agencies. *See, e.g.*, ORS 469.310 (requiring the Council to "establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state."), 469.470(1) (requiring the Council to "[c]onduct and prepare . . . in cooperation with others . . . programs relating to all aspects of site selection"), 469.470(4) (requiring the Council to "[a]dvise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government and affected groups, in furtherance of the purposes of" the Siting Act), and 469.520 (requiring "cooperation" among all state agencies, including EFSC, on their "activities and programs relating to energy, including rulemaking). The Council should ensure this mandatory cooperation among agencies by protecting these other agencies' scenic and other conservation easements.

g. National Landscape Conservation System

Commenters recommend designating as "Protected Areas" the areas in the National Landscape Conservation System ("NLCS"), the BLM-managed federal system codified at 16 U.S.C. 7202. Although some designations in the NLCS are included in other categories of land within the proposed definition, National Conservation Areas and similar designations are not. Identifying and including certain types of NLCS lands in the definition of "Protected Areas" while omitting or excluding others would be arbitrary and confusing. In contrast, expressly listing the

NLCS within the definition will protect these sensitive areas in full compliance with the Siting Act and in full partnership with the BLM.

For example, ORS 469.310 requires the Council "to establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state." Similarly, ORS 469.501(1)(c) instructs the Council to protect "[a]reas designated for protection by the state or federal government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways *and similar areas*" (emphasis added). And finally, the Legislature has required the Council to cooperate with federal agencies to protect their conservation lands. *See, e.g.*, ORS 469.310, 469.470(1), 469.470(4).

Designating NLCS lands as a category of Protected Areas will be a forward-looking solution in cooperation with the federal government that will reduce the need for future rulemaking if additional designations are made as part of the NLCS system in the future. The Council should designate the National Landscape Conservation System as a category of Protected Areas.

h. National Trails System

The NLCS (discussed above) expressly includes National Scenic and Historic Trails, 16 U.S.C. 7202(b)(1)(D), but Commenters also recommend the inclusion of the National Trails System, defined at 16 U.S.C. 1242, as a separate category within the definition of "Protected Area" for several reasons.

In addition to National Scenic and Historic Trails, the National Trails System also encompasses National Recreation Trails, National Geologic Trails, and connecting trails and side trails. 16 U.S.C. 1242. Including the Nationals Trail System within the definition of "Protected Area" will protect those sensitive areas, as well as the portions of the National Scenic and National Historic Trails that are not managed by the BLM and therefore not part of the NLCS.

The National Trails System was established by the National Trails Act of 1968, 16 U.S.C. 1241–1249, to establish and preserve recreation, scenic, and historic trails, and provide public access to scenic, historic, cultural, and natural resources. Nominally administered by the National Park Service, other agencies including the BLM, USFS, and other federal, state, and local agencies all manage lands with constituent segments of the National Trails System. Agencies adopt publicly planned strategies for ensuring continued public access and enjoyment of trails under their purview.

One particularly important trail is the Pacific Crest National Scenic Trail, which spans 2,650 miles from the U.S.-Mexico border to the U.S.-Canada border, including 455 miles in Oregon. This trail is an important symbol of the diverse landscapes of the western United States and it is enjoyed by many thousands of people each year. However, only relatively small sections of the Pacific Crest Trail are managed by the BLM and included in the NLCS.

The entire Pacific Crest Trail, along with the rest of the National Trails System, merits protection from destruction of these trails' special and unique resources. This will ensure compliance with the Council's mandates to cooperate with federal agencies and to protect recreation resources and opportunities, scenic and aesthetic resources, and historic resources—including the resources intrinsic to the National Trails System. *See, e.g.*, ORS 469.310, 469.470(1), 469.470(4), 469.501(1)(f), (i).

i. Lands with Wilderness Characteristics, Potential Wilderness Areas, Recommended Wilderness Area, and Inventoried Roadless Areas

Commenters recommend including as "Protected Areas" all areas formally designated by the Bureau of Land Management or U.S. Forest Service as Lands with Wilderness Characteristics ("LWCs"), Potential Wilderness Areas, Recommended Wilderness Areas, and Inventoried Roadless Areas. Doing so will facilitate compliance with the Council's statutory obligations to cooperate with the BLM and USFS in protecting their designated conservation lands. *See, e.g.*, ORS 469.010(1), (2)(c), 469.310, 469.470(1), (4), 469.501(1)(c), (1)(e), (1)(i).

LWCs are areas the BLM has actively inventoried via a public process and determined to possess the same characteristics as a Wilderness Area or Wilderness Study Area. Under the statutory definition of "wilderness," these are areas that (1) generally appear to have been affected primarily by the forces of nature, where the imprint of human activity is substantially unnoticeable; (2) offer outstanding opportunities for solitude or for primitive and unconfined recreation; (3) are of at least five thousand acres in size; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. 16 U.S.C. 1131(c). The BLM's land use planning process provides the opportunity to administratively prescribe management direction for LWCs to preserve their character.

Given that LWCs have the same or similar characteristics as designated Wilderness and Wilderness Study Areas and can similarly be managed by the BLM to preserve their wilderness characteristics, Commenters recommend that the Council include all LWCs as "Protected Areas." This will ensure that all BLM-managed, wilderness-quality lands (Wilderness, Wilderness Study Areas, and Lands with Wilderness Characteristics) that are managed to preserve wilderness character—both now and in the future—will be protected from the adverse impacts of energy projects and can be enjoyed by future generations of Oregonians.

Similarly, Commenters recommend including Inventoried Roadless Areas, Potential Wilderness Areas, and Recommended Wilderness Areas. These designations are assigned by the USFS. Just as designating Lands with Wilderness Characteristics as Protected Areas will ensure compliance with the Council's mandate to cooperate with federal agencies in protecting their sensitive lands and resources, so will designating Inventoried Roadless Areas, Potential Wilderness Areas, and Recommended Wilderness Areas. *See, e.g.*, ORS 469.010(1), (2)(c), 469.310, 469.470(1), (4), 469.501(1)(c), (1)(e), (1)(i).

Inventoried Roadless Areas are undeveloped areas typically exceeding 5,000 acres that have been determined to meet the minimum criteria for Wilderness consideration under the Wilderness Act and that have been inventoried during the Forest Service's Roadless Area Review

and Evaluation process, subsequent assessments, or forest planning. Potential Wilderness Areas are areas identified and evaluated during the development or revision of Forest Plans for administrative recommendation to Congress for a Wilderness designation. Recommended Wilderness Areas are areas that the USFS recommends to Congress as candidates for designation as Wilderness. In addition to the statutory considerations mentioned above, these areas merit inclusion in the "Protected Area" definition because they have the same characteristics as Wilderness Areas, which are already included in the definition. The only reason they are not officially designated as Wilderness Areas is that only Congress, not the USFS, has the power to designate lands as Wilderness. Not protecting these additional areas, which have already been identified by the appropriate expert agency as having the same wilderness character as Wilderness Areas, would be arbitrary and would not meet the Council's obligations under the Siting Act.

Finally, designating as "Protected Areas" all Lands with Wilderness Characteristics, Potential Wilderness Areas, Recommended Wilderness Area, and Inventoried Roadless Areas will achieve consistency and uniformity with the rest of the proposed definition of "Protected Area," which already includes similar areas like Wilderness Study Areas, Outstanding Natural Areas, Research Natural Areas, and Special Interest Areas. Moreover, protecting these additional areas will help account for the fact that Oregon contains such a low percentage of land designated as Wilderness Areas despite having substantial land that merits protection. Only 4% of Oregon is currently designated as Wilderness, compared to 9% of Idaho, 11% of Washington, and 15% of California. The categories of lands listed above should be designated as "Protected Areas."

j. Federal Critical Habitat

Commenters recommend designating as "Protected Areas" all critical habitat designated pursuant to the federal Endangered Species Act of 1973 ("ESA"). This will ensure consistency with, among other requirements, ORS 469.501(1)(e), which instructs the Council to protect "fish and wildlife, including threatened and endangered fish, wildlife or plant species," from harm caused by the Council's siting decisions; ORS 469.310, which requires the Council "to establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state"; and Oregon statewide planning goal 5 (made applicable by ORS 469.503(4) and 469.504), which requires the Council to protect "fish and wildlife areas and habitats," OAR 660-015-0000(5).

Critical habitat consists of fish and wildlife habitat that is determined via federal public decision-making processes to be essential to the conservation and recovery of federally protected species. The Council should support federal efforts to protect critical habitat by prohibiting energy development in these areas. Notably, many federally listed species are also protected under state law (ORS 496.171–496.182) or designated by the state as sensitive species (OAR 635-100-004) or as Species of Greatest Conservation Need in Oregon's federally approved State Wildlife Action Plan. Siting energy projects in critical habitat could adversely affect these species and contribute to their extirpation or extinction.

Moreover, including critical habitat as Protected Areas would also help the Council avoid its own potential liability for violations of the ESA. Federal courts have consistently and uniformly held that government officials and entities such as EFSC are liable under section 9 of the ESA, 16

U.S.C. 1538, for allowing private parties to take listed species, including by issuing permits or similar project approvals that harm critical habitat. *See, e.g.*, *Loggerhead Turtle v. County Council of Volusia*, 148 F.3d 1231, 1249 (11th Cir. 1998); *Strahan v. Coxe*, 127 F.3d 155, 163 (1st Cir. 1997); *Sierra Club v. Yeutter*, 926 F.2d 429, 438–39 (5th Cir. 1991); *Defenders of Wildlife v. EPA*, 882 F.2d 1294, 1301 (8th Cir. 1989); *Coal. for a Sustainable Delta v. McCamman*, 725 F. Supp. 2d 1162, 1167–68 (E.D. Cal. 2010); *Oregon Natural Desert Ass'n v. Tidwell*, 716 F. Supp. 2d 982, 1005 n.8 (D. Or. 2010); *Animal Welfare Inst. v. Martin*, 588 F. Supp. 2d 110, 113 (D. Me. 2008); *Animal Prot. Inst. v. Holsten*, 541 F. Supp. 2d 1073, 1079 (D. Minn. 2008); *Seattle Audubon Soc'y v. Sutherland*, No. CV06-1608MJP, 2007 WL 1300964, at *9–*12 (W.D. Wash. May 1, 2007); *Pac. Rivers Council v. Brown*, No. CV 02-243-BR, 2002 WL 32356431, at *10 (D. Or. Dec. 23, 2002). The Council can reduce potential liability, proactively achieve compliance with the ESA and Siting Act, and ensure natural resource protection in cooperation with the federal government by designating critical habitat as "Protected Areas."

k. Statutory Cross-References

Finally, in light of Commenters' suggestion to minimize future updates to the definition of "Protected Area," and in addition to the specific examples discussed above, the Council should consider removing as many statutory citations from this definition as possible. Many of the subsections of the Proposed Rule cite various laws and statutes, at least some of which may be unnecessary information for some of the listed categories. In addition, the cross-referenced statute section numbers can be subject to change in the future, which could make the cross-references in the Council's Rules obsolete and potentially ineffective.

Perhaps most importantly, the various laws and statutes in this Proposed Rule are referred to in different ways in the different subsections of the definition, including lands and areas "described under," "established under," "created under," "designated under," and "included under" various statutes and rules. Each of these terms may have slightly different meanings, and some of these terms may not be applicable in all intended cases—especially because Congress can establish new land designations without doing so "under," or pursuant to, a prior federal statute. To avoid confusion and litigation over whether certain areas were properly established under (or whichever other terms are used) the exact statute or statutory section listed in the rule, the Council should consider forgoing such statutory cross-references altogether.

To further prove the point, Commenters conducted a cross-check of a randomly selected sample of two statutory citations in the proposed definition and discovered that *both* of these citations appear to be in error. First, for National Monuments, the reference to "54 U.S.C. 320201" is probably intended to be "54 U.S.C. 320301." Second, for the South Slough National Estuarine Research Reserve, the reference to "ORS 273.563" is probably intended to be "ORS 273.553." These apparently erroneous citations illustrate the inherent pitfalls of cross-referencing other laws. Deleting as many of these citations from the rules as possible could reduce errors, eliminate confusion, and reduce the need to continually update the Council's Rules as various laws are relocated and recodified under new statutory sections in the future.

/ / /

Recommended Rule Language (recommended revisions to Proposed Rule in red font):

OAR 345-001-0010(49)

(49) "Protected Area" means an area designated ~~for protection~~ under federal or state law as one or more of the following:
(a) A ~~n~~National ~~p~~Park or other unit of the National Park System described under 54 U.S.C. 100501;
(b) A ~~n~~National ~~m~~Monument established under 54 U.S.C. 320~~2~~301 or by an act of Congress;
(c) A ~~w~~Wilderness ~~a~~Area established under 16 U.S.C 1131 et seq. or by an act of Congress;
(d) A ~~w~~Wild, ~~s~~Scenic, or ~~r~~Recreational ~~r~~River included in the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.;
(e) A ~~n~~National ~~w~~Wildlife ~~r~~Refuge included in the National Wildlife Refuge System described under 16 U.S.C. 668dd;
(f) A ~~n~~National ~~f~~Fish ~~h~~Hatchery established under 16 U.S.C. 760aa;
(g) An area designated as critical habitat under 16 U.S.C. 1531 et seq.;
(h) An area in the National Landscape Conservation System described under 16 U.S.C. 7202;
(i) Any area that is part of the National Trails System under 16 U.S.C. 1242;
(~~g~~j) A ~~n~~National ~~r~~Recreation area, ~~n~~National ~~s~~Scenic ~~a~~Area, or ~~s~~Special ~~r~~Resources ~~m~~Management ~~u~~Unit ~~established by an act of Congress~~;
(~~h~~k) A ~~w~~Wilderness ~~s~~Study ~~a~~Area ~~established under 43 U.S.C. 1782~~;
(l) An area designated by the Bureau of Land Management or U.S. Forest Service as Lands with Wilderness Characteristics, Potential Wilderness Area, Recommended Wilderness Area, or Inventoried Roadless Area;
(~~i~~m) Federally managed land designated ~~in a federal land management plan~~ as:
(A) An Area of ~~c~~Critical ~~e~~Environmental ~~c~~Concern;
(B) An Outstanding ~~n~~Natural ~~a~~Area;
(C) A Research ~~n~~Natural ~~a~~Area;
(D) An Experimental Forest or Range; or
(E) A Special Interest Area;
(~~j~~n) A state park, wayside, corridor, monument, historic, or recreation area under the jurisdiction of the Oregon Parks and Recreation Department;
(o) An area protected by a conservation easement or highway scenic preservation easement held by the state or federal government;
(~~k~~p) The Willamette River Greenway created under ORS 390.310 to 390.368;
(~~l~~q) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;
(r) An Outstanding Resource Water established under OAR 340-041-0004(8);
(~~m~~s) The South Slough National Estuarine Research Reserve, described under ORS 273.5~~6~~53;
(~~n~~t) A state scenic waterway designated under ORS 390.805 to 390.925 and related adjacent lands;

(~~ʘ~~u) A state wildlife refuge or management area established under ORS chapter 496;
(~~ꝑ~~v) A state fish hatchery established under ORS chapter 496 or 506;
(~~ɋ~~w) An agricultural experiment station, experimental area, or research center established by Oregon State University under ORS chapter 567; or
(~~ɾ~~x) A research forest established by Oregon State University under ORS 526.215.

2. The Council should empower managing agencies of Protected Area within study areas by including them within the Council's definition of "reviewing agency."

The Council should empower managing agencies of Protected Areas within study areas by including these agencies within the Council's definition of "reviewing agency" at Proposed Rule 345-001-0010(52). The Council's rules already expressly designate as "reviewing agencies" numerous other similar types of agencies, such as "[t]he governing body of any incorporated city or county in Oregon within the study area" and "[t]he federal land management agency with jurisdiction if any part of the proposed site is on federal land." Proposed Rules 345-001-0010(52)(p), (r). The agencies that directly manage Protected Areas should also be deemed reviewing agencies under the Council's rules in order to ensure their meaningful input and participation in the energy facility siting review process, and to comply with the Siting Act.

Indeed, the Council is statutorily required to cooperate with other governments, including state and federal agencies, counties, and cities, in furtherance of the purposes of the Siting Act. *See, e.g.*, ORS 469.310, 469.470(1), (3), (4), 469.504(9), 469.520. The Council must work with other agencies, keep them informed about energy facilities in their jurisdiction, and fully enable their participation in the important process of siting, approving, and mitigating the impacts of energy facilities. Adopting the rule as drafted would exclude the potentially affected agencies that manage Protected Areas from the definition of "reviewing agencies," while including other agencies that may be less affected. This would be an arbitrary enactment of short-sighted public policy that would frustrate the Legislature's directives to the Council to cooperate with all potentially affected federal, state, and local agencies and governments.

Commenters acknowledge that the Council anticipates future rulemaking that may ensure notice of energy siting proposals to Protected Area managers, as well as Proposed Rules 345-020-0011(1)(L)(C) and 345-021-0010(1)(L)(A)(iii), which would require applicants to provide mailing addresses for managing agencies of Protected Areas within the study area or analysis area. However, relying on a policy proposal that has yet to be formally proposed, let alone implemented, would not sufficiently ensure that Protected Area managers will be meaningfully involved in the review process. Nor would merely providing the mailing addresses of these agencies and/or notice to these agencies be anywhere close to enabling them as full partners in the energy siting process.

In the ODOE Memo, ODOE staff speculated that perhaps not all managers of Protected Areas will be interested in participating in each review process. But rather than excluding these agencies from the definition of "reviewing agency" at the outset and thereby effectively shutting them out of the decision-making process (and also potentially precluding the reimbursement of

these agencies' costs for their involvement), a better solution would be to include language in the rule allowing such agencies to opt out of the review process if they so choose.

Recommended Rule Language (recommended revisions to Proposed Rule in red font):

OAR 345-001-0010(52)

(52) "Reviewing agency" means any of the following officers, agencies or tribes:
(a) The Department of Environmental Quality;
(b) The Water Resources Commission and the Water Resources Director through the Water Resources Department;
(c) The Fish and Wildlife Commission through the Oregon Department of Fish and Wildlife;
(d) The State Geologist;
(e) The Department of Forestry;
(f) The Public Utility Commission of Oregon;
(g) The Oregon Department of Agriculture;
(h) The Department of Land Conservation and Development;
(i) The Oregon Department of Aviation;
(j) The Pacific Northwest Electric Power and Conservation Planning Council;
(k) The Office of State Fire Marshal;
(l) The Department of State Lands;
(m) The State Historic Preservation Office;
(n) Any other agency identified by the Department;
(o) Any tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility;
(p) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345- 001-0010 for impacts to public services;
(q) Any special advisory group designated by the Council under ORS 469.480; ~~and~~
(r) The federal land management agency with jurisdiction if any part of the proposed site is on federal land~~.~~; and
(s) Any managing agency of any Protected Area within the study area.

3. The Council should ensure that scenic resources identified as significant or important in interstate and regional land use plans will be identified and protected as part of the energy facility siting process.

Proposed Rules 345-021-0010 and 345-022-0080 should expressly include "interstate" and "regional" land use plans among the list of sources for identifying significant and important scenic resources.

Among other authorities, ORS 469.501(1)(i) instructs the Council to develop rules for protecting "recreation, scenic and aesthetic values" from the "[i]mpacts of [energy] facilit[ies]." Moreover, Oregon statewide planning goal 5, which is applicable to the energy siting process via ORS 469.503(4) and 469.504, calls for the conservation of scenic resources, including in "coordinat[ion] with local and *regional* plans." OAR 660-015-0000(5) (emphasis added). The

Council is therefore required to ensure that its rules comprehensively address impacts to scenic resources, including such resources protected by interstate and regional plans.

Expressly including interstate land use plans would also better capture the Management Plan for the Columbia River Gorge National Scenic Area ("Gorge Management Plan"), which is arguably a federal land management plan and thereby already included within the current language of the rules, but is best described as an interstate land use plan. The Gorge Management Plan is adopted by the Columbia River Gorge Commission, an interstate compact agency, with only the Special Management Area provisions prepared by the USFS, a federal agency. 16 U.S.C. 544d(c), 544f(f)(1).

As state agencies, EFSC and ODOE are required to comply with the requirements and standards of the Gorge Management Plan. *See* ORS 196.155 ("[A]ll state agencies . . . are hereby directed and provided authority to carry out their respective functions and responsibilities in accordance with the [Columbia River Gorge Compact] and the Columbia River Gorge National Scenic Area Act."). One important mandatory aspect of protecting scenic resources within the National Scenic Area is to ensure that air pollution from new thermal power plants does not reduce visibility and thereby mar the Gorge's natural scenic resources and values. *See* 2020 Gorge Management Plan at 118 ("Air quality [in the Columbia River Gorge National Scenic Area] shall be protected and enhanced, consistent with the purposes of the Scenic Area Act. . . . [T]he States shall develop and implement a regional air quality strategy to carry out the purposes of the Scenic Area Act . . . .").

Similarly, expressly including "regional" land use plans in the Rules would better capture plans adopted by regional governments such as Oregon Metro and any other metropolitan service district. *See* ORS Chapter 268; ORS 197.015(14). In the alternative, the existing "local land use plans" language in Proposed Rule 345-022-0080 could be revised to instead expressly refer to land use plans adopted by "local governments" as that term is defined by ORS 197.015(13) ("any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025"). Either way, the Council's rules need to better reflect coverage of regional plans.

As it is currently written, the Proposed Rule fails to take regional and interstate land use plans into account when establishing which scenic resources are important for the energy siting process, thereby frustrating compliance with the Siting Act and potentially causing unwarranted harm to important scenic resources and values. Expressly including interstate and regional land use plans, as recommended below, would clarify and improve the language of the Council's proposed rule and bring it into compliance with the law.

Recommended Rule Language (recommended revisions to Proposed Rules in red font):

OAR 345-021-0010

(1) … The applicant must include in its application for a site certificate information that addresses each provision of this rule identified in the project order…

> (r) Exhibit R. An analysis of potential visual impacts of the proposed facility, if any, on significant or important scenic resources within the analysis area, providing evidence to support a finding by the Council under OAR 345-022-0080, including:
> (A) An inventory of scenic resources identified as significant or important in a land use management plan adopted by one or more local, tribal, state, interstate, regional, or federal government or agency applicable to lands within the analysis area…

OAR 345-022-0080

> (1) To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse visual impacts to significant or important scenic resources …
> (3) A scenic resource is considered to be significant or important if it is identified as significant or important in current a land use management plan adopted by one or more local, tribal, state, interstate, regional, or federal government or agency.

4. The Council should continue to require applicants for large energy facilities to identify the potential visual impacts of their proposed projects on scenic resources.

Proposed Rule 345-021-0010(1)(r)(D)(ii) would replace the current requirement for siting applicants to identify the "visual impacts of facility structures or plumes" with a requirement to merely identify "*[c]hanges in landscape character or quality* due [to] facility structures or plumes" (emphasis added). *Both* requirements should be included in the rule, and not only in Proposed Rule 345-021-0010(1)(r)(D)(ii) (Exhibit R, scenic resources), but also in Proposed Rules 345-021-0010(1)(L)(C)(v) (Exhibit L, protected areas) and 345-021-0010(1)(t)(B)(iv) (Exhibit T, recreation resources).

Adverse visual impacts can involve more than just impacts at a landscape level. The Council's Rules should ensure that the impacts of each proposed large energy facility on scenic values will be fully disclosed and evaluated pursuant to ORS 469.501(1)(i). In addition, Oregon statewide planning goal 5, which is applicable to the energy siting process via ORS 469.503(4) and 469.504, calls for the conservation of scenic resources. OAR 660-015-0000(5). The Council is therefore required to ensure that its rules comprehensively address potential impacts to scenic resources, and not just impacts to landscape character and quality.

Retaining the "visual impacts" language in this Rule is also necessary to maintain consistency with Proposed Rule 345-021-0010(1)(L)(C)(v), which even under the draft rules as proposed would still require the identification of potential "Visual impacts of facility structures or plumes" on Protected Areas, as well as Proposed Rule 345-021-0010(1)(t)(B)(iv), which would still require the identification of "Visual impacts of facility structures or plumes" to recreational opportunities in the analysis area.

In fact, Commenters' suggestion for Proposed Rule 345-021-0010(1)(r)(D)(ii) should be implemented for Proposed Rules 345-021-0010(1)(L)(C)(v) and 345-021-0010(1)(t)(B)(iv) as

well, as shown below. The Council should maintain applicants' current obligations to disclose potential impacts to scenic resources, while clarifying that such impacts may include changes in landscape character or quality.

Recommended Rule Language (recommended revisions to Proposed Rules in red font):

OAR 345-021-0010

(1) … The applicant must include in its application for a site certificate information that addresses each provision of this rule identified in the project order…
…
(L) **Exhibit L.** ...
...
(C) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:
…
(v) Visual impacts of facility structures or plumes, including changes in landscape character or quality…
…
(r) **Exhibit R.** ...
...
(D) Identification of potential visual impacts to the scenic resources identified in paragraph (A), including, but not limited to:
…
(ii) Visual impacts of facility structures or plumes, including changes in landscape character or quality ~~due facility structures or plumes~~;
…
(t) **Exhibit T.** ...
...
(B) A description of any potential adverse impacts to the important opportunities identified in paragraph (A) including, but not limited to:
…
(iv) Visual impacts of facility structures or plumes, including changes in landscape character or quality;

5. The linear facilities exception language should be strengthened to avoid unlawful adverse impacts to protected resources.

Commenters appreciate that the proposed rules would clarify that linear facilities are allowed in Protected Areas only when other alternatives would have greater impacts to resources. However, some important changes are necessary to Proposed Rule 345-022-0040 to avoid unlawful adverse impacts to protected resources. Specifically, the words "reasonable" and "unsuitable" should be replaced with "practicable" and "not practicable," respectively.

The word "practicable," which is generally defined as "capable of being … done"[1] and in the Gorge Management Plan as "[a]ble to be done, considering technology and cost,"[2] offers a clear, unambiguous standard under which the Council would be authorized to issue site certificates for linear facilities proposed in Protected Areas. "Reasonable" and "unsuitable," on the other hand, are relatively subjective standards that would inevitably result in unlawful, adverse impacts to resources that must be protected.

ORS 469.503(1) provides that energy siting certificate cannot be approved unless they comply with "the applicable standards adopted by the council pursuant to ORS 469.501," which includes the standards related to Protected Areas. The weak language of the Proposed Rule would invite arguments about what it means for an alternative route to be "reasonable" or "unsuitable," and could be exploited to result in the approval of facilities that would harm Protected Areas and their sensitive resources in violation of ORS 469.503(1) and other provisions of the Siting Act and the Council's rules.

By using the words "practicable" and "not practicable," the Council will create a clear, unambiguous, and not easily exploited standard governing the circumstances under which linear facilities may be allowed in Protected Areas. This would also bring the Council's rules into greater alignment with other environmental protection systems that use the terms "practicable" and "not practicable" for determining the circumstances under which projects may intrude into environmentally protected areas (such as wetlands and other water resources) where they would not otherwise be allowed, as used in the statutes or implementing regulations for the Clean Water Act, the Columbia River Gorge National Scenic Area Act, the National Environmental Policy Act, and other laws.

Recommended Rule Language (recommended revisions to Proposed Rule in red font):

OAR 345-022-0040

(2) Notwithstanding section (1)(a), the Council may issue a site certificate for
(a) A facility that includes a transmission line, natural gas pipeline, or water pipeline located in a protected area, if the Council determines that other ~~reasonable~~ practicable alternative routes or sites have been studied and that the proposed route or site is likely to result in fewer adverse impacts to resources or interests protected by Council standards; or
(b) Surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if the Council determines that other alternative routes or sites have been studied and are ~~unsuitable~~ not practicable.

/ / /

[1] *Practicable*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/practicable (last visited July 19, 2021).
[2] 2020 Gorge Management Plan at 434.

6. The Council must decline to adopt several of the Proposed Rules because they would unlawfully exempt proposed energy projects from having to comply with current rules and standards.

Several of the Proposed Rules appear to be designed to exempt proposed energy projects from having to comply with the Council's current rules and standards, and instead would apparently make these projects subject to rules and standards adopted as long ago as 2002. The Council must decline to adopt these rules, which would violate the Siting Act.

In particular, the Legislature has expressly required the Council to apply to all pending applications for site certificates the rules and standards "in effect on the date the site certificate or amended site certificate is executed," not rules and standards from twenty years ago. ORS 469.401(2). Proposed Rules 345-022-0040(4), 345-022-0080(4), and 345-022-0100(4) would violate this statutory requirement by apparently requiring applications completed before the effective date of each of these Proposed Rules to be evaluated under previous versions of the Council's Rules. Similarly, Proposed Rules 345-022-0040(1)(a) and (b) would only require the protection of any Protected Areas that may have been designated on or before the date an application is completed, not on or before the date any site certificate is executed. These Proposed Rules would unlawfully exempt energy projects from having to comply with the laws, rules, and standards in effect at the time a site certificate is executed, and thus violate ORS 469.401(2). The Council must reject these Proposed Rules.

Again, ORS 469.401(2) says "[t]he site certificate or amended site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate or amended site certificate is executed." This statutory provision was explained by the Oregon Supreme Court in *Blue Mountain Alliance v. Energy Facility Siting Council*:

> [T]he reference in ORS 469.401(2) to "local ordinances and state law and the rules of the council in effect" on the certificate execution date logically refers to the ordinances, state law, and council rules that previously were determined to apply to the facility in the course of developing the project order under ORS 469.330(3)… *Additionally, the phrase includes applicable ordinances, laws, and rules that may have become effective between the project order issuance date and the site certificate execution date*—that is, provisions that, had they been in effect at the time that the project order issued, would have been included in that order under ORS 469.330(3).

Blue Mountain Alliance v. Energy Facility Siting Council, 354 Or. 465, 477, 300 P.3d 1203 (Or. 2013) (emphasis added). The case goes on to explain that the only exception to this provision is local land use regulations. *Id*. at 483 (citing ORS 469.504(1)(b)(A)).

In light of these authorities, reviewing newly proposed energy facilities under obsolete versions of the applicable rules and standards would be unlawful. To do so would violate the Siting Act and the precedent of the Oregon Supreme Court. Accordingly, the language identified below

in Proposed Rules 345-022-0040(1)(a), (1)(b), 345-022-0040(4), 345-022-0080(4), and 345-022-0100(4) must be rejected by the Council.

In the ODOE Memo, ODOE notes that ORS 469.503, one of the statutory provisions governing site certificate approval, is silent on whether it includes any "goal post" requirement dictating which versions of the rules must be applied to pending applications. Although that statement is accurate with regard to ORS 469.503, that statutory section must be read in light of the rest of the Siting Act and to conform with all other provisions. ORS 469.401(2) expressly applies to any execution of a site certificate, and as shown above, requires all energy facilities to comply with all laws, rules, and ordinances in effect on the date any site certificate is executed. ORS 469.401(2) thus *prevents* the Council from imposing a "goal post" requirement via rulemaking, and this statutory provision has already been interpreted in *Blue Mountain Alliance* to mean what it says: the Council must ensure compliance with all applicable standards when a site certificate is executed—even standards adopted in the later stages of the Council's review.

Additional case law further confirms that it is entirely proper and consistent with the Siting Act for new standards and rules to be adopted and applied in the course of an EFSC adjudication or contested case, so long as sufficient advance notice is provided to all parties. This doctrine is articulated in *Marbet v. PGE*:

> It is not indispensable that every standard under ORS 469.470(3) and 469.510 have been adopted in the form of a rule before the initiation of a contested case, as long as it is in fact adopted as a standard, upon notice and procedures that allow for the presentation of views and data on the issues involved, and sufficiently in advance of the final decision so that the applicant and other parties can address the import of the standard for the particular project… *We have indicated that the statute does not mandate all standards to be established before a site certification is initiated. They may be stated and refined in the course of the proceeding.*

Marbet v. PGE, 277 Or. 447, 463, 471, 561 P.2d 154 (Or. 1977) (emphasis added).

The rulemaking process provides sufficient notice of new standards and opportunities for input to all parties and fully satisfies the fair notice standards for pending applications articulated under *Marbet*. Thus, any applicant whose application is currently under review has had a full and fair opportunity to participate in this rulemaking project and influence or object to any of the proposed rules. Furthermore, once this rulemaking project is complete and the rules are adopted, any such applicant will have been provided with sufficient notice to address any substantive changes to the rules in their applications. In fact, this rulemaking project (including during its informal stages) has engendered substantial interest and participation by energy industry representatives and their attorneys for well over a year and a half. Applicants for energy facilities should focus their comments on the substance of these Proposed Rules, rather than pursuing or endorsing unlawful procedural exemptions for their projects as reflected in the Proposed Rules identified below.

There are additional reasons, grounded in good public policy, to not exempt pending proposed energy projects from newly adopted rules. Applications for site certificates can be

pending before the Council for months or even years, yet under the Proposed Rules applicants would be able to cap their obligations at a relatively early stage in the process even though the law and the environment are changing around them. Allowing applicants for large energy projects to completely ignore newly enacted laws and standards would interfere with the Council's obligation to site energy facilities in accordance with the environmental protection policies of the state and to ensure protections for various categories of Protected Areas first designated by the Council's partner state and federal agencies and then by the Council itself. *See* ORS 469.310, 469.501(1)(c). When other state and federal agencies and governmental bodies designate these areas for protection, they expect the protections to actually apply to energy projects. The Proposed Rules would render such designations utterly meaningless for all proposed energy projects already under review prior to the designations—even in situations where these projects are likely to harm the Protected Areas. The Legislature never intended such an absurd, harmful result when it directed the Council to ensure meaningful cooperation with the federal government and other state agencies and instructed the Council to ensure the protection of special places around the state and the sensitive resources of these areas. To ensure compliance with the Siting Act and the precedent of the Oregon Supreme Court, the Council must reject the Proposed Rules identified below.

Finally, Proposed Rules 345-022-0040(4), 345-022-0080(4), and 345-022-0100(4) present significant transparency issues. As mentioned above, these Proposed Rules imply that applications that were completed before the effective date of these new Rules would not have to comply with current rules and standards. Instead, the energy projects proposed in such applications would only have to comply with the standards articulated in Administrative Order EFSC 1-2007 or Administrative Order 1-2002, depending on the Rule. But those Administrative Orders are fifteen and twenty years old, respectively, and not easily accessible to the public and applicants, making it difficult to understand which outdated standards the Council might base its decisions on.

Furthermore, these Proposed Rules are extremely unclear, especially the language that EFSC must "apply *the standard* adopted under" these prior Orders (emphasis added). Which "standards" in the prior Orders are being referenced in these Proposed Rules? Does "standards" mean "rules," or something else? If "standards" means "rules," why do the Proposed Rules not state that, and why do they not provide the specific applicable rule section number(s)? Furthermore, are these Proposed Rules intended to say that these unidentified "standards" (or rules) from fifteen and twenty years ago are intended to apply *in place of* current law, or *in addition to* current law? As outlined above, either approach would violate the Siting Act, which prohibits the Council from applying obsolete rules and standards to pending applications. As a matter of both law and policy, the Council's rules should not vaguely incorporate by reference unclear portions of inaccessible, long-outdated agency orders. The Council should reject the Proposed Rules identified below.

Recommended Rule Language (recommended revisions to Proposed Rules in red font):

OAR 345-022-0040

(1) To issue a site certificate, the council must find:
(a) The proposed facility will not be located within the boundaries of a protected area ~~designated on or before the date the application for site certificate or request~~

~~for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363~~;
(b) The design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to a protected area ~~designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363~~.
…
~~(4) The Council shall apply the standard adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule.~~

OAR 345-022-0080

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

OAR 345-022-0100

~~(4) The Council must apply the standard adopted under Administrative Order EFSC 1-2002, filed and effective April 3, 2002, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule.~~

7. Conclusion

Thank you for the opportunity to comment on the proposed revisions to the Council's Rules for Protected Areas, Scenic Resources, and Recreation Resources. While we support the goals of updating the rules to reduce the need for future rulemaking and to provide clarity and reduce ambiguity in the application process, we are concerned that many of the proposed revisions would not successfully achieve those goals and in fact would violate the law. We hope that our comments and recommendations will be useful to ODOE and the Council in resolving and remedying the questions and concerns we have identified, and in complying with applicable law and the stated goals of this important rulemaking endeavor. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

Nathan Baker
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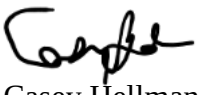

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