

# AMENDED NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

## CHAPTER 345 ENERGY FACILITY SITING COUNCIL

---

**FILING CAPTION:** Amendment of Protected Areas, Scenic Resources, and Recreation Standards and Associated Rules

**LAST DAY AND TIME TO OFFER COMMENT TO AGENCY:** 12/8/2022 at 5:00 pm

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Christopher Clark  
503-871-7254  
EFSC.Rulemaking@energy.oregon.gov  
Oregon Department of Energy  
ATTN: EFSC RULES COORDINATOR  
550 Capitol St. NE  
Salem, OR 97301

---

### **NEED FOR THE RULE(S):**

The legislature established the Energy Facility Siting Council to oversee a comprehensive program for the siting, monitoring and regulation of energy facilities in Oregon. To this end, the Council must establish rules and standards to ensure that the siting, construction and operation of energy facilities is accomplished in a manner consistent with the protection of public health and safety and in compliance with Oregon's energy, land use, and environmental protection policies.

ORS 469.501(1) identifies several subjects that may be addressed by the Council's siting standards, including areas designated for protection by the state or federal government and the impacts of a facility on recreation, scenic, and aesthetic values. The Council has adopted standards for addressing these subjects under its general standards for siting facilities found in OAR chapter 345, division 22.

The Protected Areas and Scenic Resources Standards were last amended in 2007. The Recreation standard was last amended in 2002. Over the past 15 years, numerous 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. In addition, 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. Rulemaking is needed to ensure that impacts to these new areas and designations are addressed during the siting process and that the siting of energy facilities continues to be accomplished in compliance with Oregon's current land use and environmental protection policies.

These rules also contain changes intended to facilitate the notification of and coordination with federal and state land managing agencies that administer protected areas. The Council will consider additional changes to its public notification procedures in a future rulemaking, but as an interim policy, will require any public notice issued by the Department during the review of an Application for Site Certificate or Request for Amendment of a Site Certificate be provided to the managing agency of any Protected Area within the applicable study or analysis area for the project. In addition to requesting comment on these proposed rules, the Council requests public comment on this policy and whether other options should be considered for achieving the policy's substantive goals while reducing negative economic impact of the rule on business.

#### **DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

Staff Report and Supporting Materials for Agenda Item D of the October 22-23, 2022, Energy Facility Siting Council Meeting.

Staff Report and Supporting Materials for Agenda Item F of the April 22-23, 2022, Energy Facility Siting Council Meeting.

Staff Report and Supporting Materials for Agenda Item D of the February 25, 2022, Energy Facility Siting Council Meeting.

Staff Report and Supporting Materials for Agenda Item C of the April 22, 2022, Energy Facility Siting Council Meeting.

Staff Report and Supporting Materials for Agenda Item E of the May 26-27, 2022, Energy Facility Siting Council Meeting.

Staff Report and Supporting Materials for Agenda Item B of the October 28, 2022, Energy Facility Siting Council Meeting.

Audio Recording of the November 14, 2022, Fiscal Impact Advisory Committee Meeting.

All documents are available from <https://www.oregon.gov/energy/facilities-safety/Pages/default.aspx>, or from the Oregon Department of Energy upon Request.

#### **STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:**

These rules amend standards intended to address the impacts of energy facility siting on protected areas, scenic resources, and recreational opportunities. These resources are important to many different communities in Oregon, and as such it is not clear that this rulemaking would have a direct impact on racial equity in this state. Energy facilities subject to the Council's jurisdiction are typically located in rural areas east of the Cascade Mountain Range. While these areas generally have similar demographics as the statewide population, some Counties that have seen significant levels of energy development, such as Wasco, Jefferson, Umatilla, and Klamath Counties also contain tribal lands and, according to 2021 data from the US Census Bureau Population Estimates Program, have higher percentages of people who identify as American Indian than the statewide population. Some counties which contain numerous energy facilities, including Morrow and Umatilla Counties, also have a higher percentage of people that identify as Hispanic or Latino than the statewide population.

#### **FISCAL AND ECONOMIC IMPACT:**

The rules are not expected to result in any additional expenditures or revenues for state agencies or units of local government.

The rules could result in some fiscal or economic impacts on a person proposing to construct or

operate a new energy facility. These impacts would primarily be associated with increased information and analysis needed to satisfy the revised standards, but there could also be increased costs associated with the mitigation of impacts to protected areas, scenic or recreational resources, including costs associated with avoiding siting energy facilities in or near these resources.

Because these fiscal and economic impacts would only apply to applications for site certificate or requests for a site certificate amendment that are filed after the effective date of these rules, and because the magnitude of impacts would be highly dependent on the size, type, and location of a proposed facility, we are unable to quantify the potential impacts, however, we expect any changes to be small in comparison to the overall costs required to comply with the existing or proposed rules.

#### **COST OF COMPLIANCE:**

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

These rules will apply to persons applying for an energy facility site certificate and certificate holders who wish to amend their site certificate. Typically, applicants and certificate holders include electric and natural gas 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. Because the analysis required is substantively the same as that required under the current rules, any increase in costs is expected to be less than significant.

The proposed rules would also require applicants to provide the name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over a protected area identified in a Notice of Intent or Application. This information is generally available via internet search or other publicly available resources. On average, applications for site certificate for wind and solar facilities submitted between 2006 and 2022 identified 12 protected areas in the analysis area for impacts to protected areas (typically 20-miles from the proposed site boundary of a proposed facility). Considering that many protected areas located next to each other are managed by the same agency, we conservatively estimate that the rules will require 5-10 minutes of additional work per protected area in each application, or a total of approximately 1-2 hours of additional time per application. This amount of additional work is insignificant relative to the total amount of time needed to prepare an application under the existing or proposed rules. However, to reduce this potential burden, the Department will also publish a list of websites where the contact information typically can be located and other information related to protected areas and make it available to applicants and certificate holders.

No direct fiscal impacts or administrative costs to state agencies or units of local government are expected to result from these rules. In the event that a state agency or local government were required to assist in the review of a proposed project to determine compliance with the amended standards and rules, that agency or government's costs would be recoverable from the applicant

under ORS 469.421. Some stakeholders have raised concerns that these rules could cause some persons to alter a planned facility to remain under the jurisdiction of local governments instead of seeking a site certificate from the Energy Facility Siting Council thus increasing the burden on local government. While theoretically possible, this contention seems speculative and the Department does not have any information on which to estimate what such an economic effect, if any, might be.

Based on comments made by the Fiscal Impact Advisory Committee appointed for this rulemaking, we estimate that there may be approximately 12-15 energy developers operating in Oregon that have 50 or fewer employees, although to our understanding, many of these companies utilize parent companies or affiliates as a core part of their business model and thus may not qualify as small businesses. However, assuming they all qualify as small businesses, and assuming all were to apply for a site certificate in the future (which is not expected), our best estimate is that there are potentially 12-15 small businesses that could be affected by the proposed rules.

If a small business were to apply for a site certificate in the future, the impacts would be identical to those experienced by other applicants and certificate holders. Such impacts are not expected to be significant nor disproportionately affect small businesses as compared to other businesses because the impact of the rules is not related to the size of the business proposing a project but to the size and location of the project being proposed (e.g., a project with a larger footprint could require analysis of more protected areas than a project with a smaller footprint). The expected reporting, recordkeeping and administrative activities and other costs required to comply with the rules would be similar to those required under the current rules. While there may be some increases in costs of preparing a Notice of Intent, Application for Site Certificate, or Request for Amendment, including the costs of professional services, equipment, supplies, labor, and increased administration required for conducting analyses for impacts to the additional protected areas, scenic resources, and recreational opportunities that must be evaluated under these rules, the increases would be relatively small compared to costs of compliance under the current rules. We note that as part of the siting process, applicants must demonstrate that they have the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety as well as the ability to restore the site to a useful, non-hazardous condition. We note that a business that has this ability, or access to the technical expertise needed to demonstrate this ability, should not be disproportionately burdened by this rule regardless of its size. Because the proposed rules would only potentially affect a small number of small businesses, would only result in relatively small changes in costs of compliance, and would affect large and small energy developers equally, we do not expect the proposed rules to have a significant adverse impact on small businesses.

**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

At its meeting on October 28, 2022, the Energy Facility Siting Council directed the Department to convene a Fiscal Impact Advisory Committee to provide recommendations on whether the rule would have a fiscal impact, what the extent of that impact would be and whether the rules would have a significant adverse impact on small businesses. The committee included persons who represented the interests of small businesses. The department met with the committee on November 14, 2022. During the meeting, the Department sought the committee's recommendations on compliance with ORS 183.540. A committee member provided the following recommendations:

- (1) Fully exempt small businesses from compliance with the Rulemaking;
- (2) Exempt small businesses from compliance with the requirement to provide names, addresses, phone numbers, and email addresses of any land management agency or organization with jurisdiction over the protected areas proposed to be added to Exhibit L of an Application for Site Certificate;
- (3) Provide some other mechanism to assist small businesses with compliance with the Rulemaking, such as allowing small businesses to submit a project area map for the Department to undertake the analysis of impacted protected areas.

These recommendations have not been incorporated into the proposed rules. Because the rules are intended to apply to all proposed energy facilities, regardless of the size of the applicant, fully exempting small businesses from compliance would not be consistent with the purpose of the rules. Further, exempting small businesses from particular information requirements (such as the contact information for agencies with jurisdiction over protected areas) would not result in a reduction of costs of compliance for those businesses, because the burden to provide the information would merely be transferred to the Department, and under ORS 469.421, any person submitting a notice of intent, application for a site certificate, or request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council and the Department related to the review and decision of the council.

**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? Yes IF NOT, WHY NOT?**

In developing the proposed rules that appeared in the Notice of Proposed Rulemaking that was issued on June 1, 2022, the Council conducted a series of three public workshops on the proposed rules to solicit public views and input in lieu of consulting an Administrative Rule Advisory Committee. The Council also separately invited the nine federally recognized tribes in Oregon to provide input and recommendations on policy issues under consideration as part of this rulemaking.

Based on comments received on the Notice of Proposed Rulemaking filed with the Secretary of State on May 27, 2022, the Council authorized its staff to convene a Fiscal Impact Advisory Committee to provide recommendations on whether the rule would have a fiscal impact, what the extent of that impact would be and whether the rules would have a significant adverse impact on small businesses. The committee included persons who represented the interests of small businesses. The department met with the committee on November 14, 2022.

**RULES PROPOSED:**

345-001-0010, 345-020-0011, 345-021-0010, 345-022-0040, 345-022-0080, 345-022-0100

**AMEND: 345-001-0010**

**RULE TITLE:** Definitions

**RULE SUMMARY:** Replaces and amends definition of “protected area” formerly located in OAR 345-022-0040. Categories of protected areas are updated, and specific area references are removed and replaced with references to authorizing law or statute for designation, where possible. Expands list to include special resource management areas administered by a Federal Agency other than the US Bureau of Land Management. Makes additional editorial changes for clarity and consistency. NOTE: Rule language has been modified from that presented in the Notice filed with the Secretary of State on May 27, 2022. Please see the Staff Report and Supporting Materials for Agenda Item B of the October 28, 2022, Energy Facility Siting Council Meeting for additional information.

**RULE TEXT:**

In this chapter, unless the context requires otherwise or a term is specifically defined within a division or a rule, terms have the meaning provided in ORS 469.300 and the following definitions:

(1) "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.

(2) "Applicant" as defined in ORS 469.300 or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.

(3) "Background radiation" means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background must be determined as follows:

(a) For direct radiation, the results of any background measurements taken prior to operation of the facility must be provided and 6 to 10 measurements must be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background must be calculated at the average and at the 95% confidence level.

(b) Environmental samples must be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples must be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations must be selected and surveyed. Six to ten samples of each material must be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements must include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout must be characterized as well.

(d) All measurements must be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.

(4) "Certificate holder" means the person to whom a site certificate has been granted by the Council pursuant to this chapter.

(5) "Chair" means the chair of the Energy Facility Siting Council.

(6) "Committed firm energy and capacity resources" means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.

(7) "Corridor" means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline. "Micrositing corridor" is defined below in this rule.

(8) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(9) "Council Secretary" means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.

(10) "Department" means the Oregon Department of Energy created under ORS 469.030.

(11) "Direct cost" means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.

(12) "Energy facility" includes:

(a) An energy facility as defined in ORS 469.300;

(b) A small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210; and

(c) A facility for which a developer or governing body has elected to defer regulatory authority to the Council under ORS 469.320(8).

(13) "Energy supplier" means:

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(14) "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.

(15) "Facility" as defined in ORS 469.300 or a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210 together with any related or supporting facilities.

(16) "Facility substantially similar to the proposed facility" means:

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

(17) "Fossil fuel" means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials that is used to produce useful energy.

(18) "Fuel chargeable to power heat rate" means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate using the formula,  $FCP = (FI - FD) / P$ , where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value). (d) P = Annual net electric output of the cogeneration facility in kilowatt-hours.

(19) "High efficiency cogeneration facility" means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under average annual operating conditions:

(a) Has a nominal electric generating capacity of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater than 5550 Btu per kilowatt-hour (higher heating value); or

(b) Has a nominal electric generating capacity of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater than 6000 Btu per kilowatt-hour (higher heating value).

(20) "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.

(21) “Micrositing corridor” means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.

(22) “Mitigation” means taking one or more of the following actions listed in order of priority:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Partially or completely rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;
- (e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or
- (f) Implementing other measures approved by the Council.

(23) “Net electric power output” means the electric power produced or capacity made available for use. Calculation of net electric power output subtracts losses from on-site transformers and power used for any on-site electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.

(24) “Owner” means owner or lessee under a capital lease.

(25) “Permit” means any permit, license, certificate or other approval required by federal law, state statute, state administrative rule or local government ordinance. \_

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

- (a) A National Park or other unit of the National Park System described under 54 U.S.C. 100501;
- (b) A National Monument established under 54 U.S.C. 320301 or by an act of Congress;
- (c) A Wilderness Area established under 16 U.S.C 1131 et seq. or by an act of Congress;
- (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) A National Wildlife Refuge included in the National Wildlife Refuge System described under 16 U.S.C. 668dd;
- (f) A National Fish Hatchery established under 16 U.S.C. 760aa;
- (g) A National Recreation area, National Scenic area, or Special Resources Management Unit established by an act of Congress;
- (h) A Wilderness Study Area established under 43 U.S.C. 1782;
- (i) Land designated in a federal land management plan or by an act of congress as:
  - (A) An Area of Critical Environmental Concern;
  - (B) An Outstanding Natural Area;
  - (C) A Research Natural Area;
  - (D) An Experimental Forest or Range; or
  - (E) A Special Interest Area designated for scenic, geologic, botanic, zoologic, paleontological, archaeological, historic, or recreational values, or combinations of these values;
- (j) A state park, wayside, corridor, monument, historic, or recreation area under the jurisdiction of the Oregon Parks and Recreation Department;
- (k) The Willamette River Greenway created under ORS 390.310 to 390.368;
- (L) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;
- (m) The South Slough National Estuarine Research Reserve, described under ORS 273.5653;
- (n) A state scenic waterway designated under ORS 390.805 to 390.925 and related adjacent lands;
- (o) A state wildlife refuge or management area identified in OAR chapter 635, division 008;
- (p) A fish hatchery operated by the Oregon Department of Fish and Wildlife;

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

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

(267) “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.

(278) “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.

~~(289)~~ “Significant” means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

~~(2930)~~ “Site” as defined in ORS 469.300. “Energy facility site” means all land upon which an energy facility is located or proposed to be located. “Related or supporting facilities site” means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.

~~(301)~~ “Site boundary” means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micro-siting corridors proposed by the applicant.

~~(312)~~ “Solar photovoltaic power generation facility” includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores or transfers that electricity. This includes photovoltaic modules, mounting and tracking equipment, posts, electrical cabling, inverters, transformers, collection systems, fencing, and other components.

(a) For the purposes of applying the acreage standards of ORS 469.300(11)(a)(D), the land used by a solar photovoltaic power generation facility includes the land occupied by its related or supporting facilities. Related or supporting facilities are not otherwise considered to be components of the solar photovoltaic power generation facility;

(b) A proposed solar photovoltaic power generation project may be determined to be an expansion of any existing or proposed solar photovoltaic power generation facility that is:

(A) Within one mile of the proposed project; and

(B) Determined to be under common ownership with the proposed project. Projects connected to the same parent company or individuals will be considered to be in common ownership, regardless of the operating business structure;

(c) As used in this rule and OAR 345-001-0250, a “proposed solar photovoltaic power generation project” means:

(A) The proposed development of a separate and independent solar photovoltaic power generation facility; or

(B) The proposed expansion or modification of a proposed or existing solar photovoltaic power generation facility.

~~(323)~~ “Special nuclear material” means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.

~~(334)~~ “Strategic flexibility” means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

~~(345)~~ “Study area” means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

(a) For impacts to threatened and endangered plant and animal species, 5 miles.

(b) For impacts to scenic resources and to public services, 10 miles.

(c) For land use impacts, wildfire risk, and impacts to fish and wildlife habitat, one-half mile.

(d) For impacts to recreational opportunities, 5 miles.

(e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.

(f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.

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

~~(356)~~ “Substantial loss of steam host” means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

~~(367)~~ “Substantial loss of fuel use efficiency” means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

~~(378)~~ “Surface facilities related to an underground gas storage reservoir” means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed

to be built in connection with an underground gas storage reservoir and include, but are not limited to:

(a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment and compressors;

(b) Pipelines, such as gathering lines and liquid collection lines; and

(c) Roads and road maintenance equipment housing at the reservoir site.

(389) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(3940) "Useful thermal energy" means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(401) "Vice-chair" means the vice-chair of the Energy Facility Siting Council.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.503

STATUTES/OTHER IMPLEMENTED: ORS 469.300-469.570, 469.590-469.619, 469.992

**AMEND: 345-020-0011**

**RULE TITLE:** Contents of a Notice of Intent

**RULE SUMMARY:** Requires applicant to identify all protected areas in study area in its Notice of Intent, and provide the name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over each protected area. Makes additional editorial changes for clarity and consistency. NOTE: Rule language has been modified from that presented in the Notice filed with the Secretary of State on May 27, 2022. Please see the Staff Report and Supporting Materials for Agenda Item B of the October 28, 2022, Energy Facility Siting Council Meeting for additional information.

**RULE TEXT:**

(1) The applicant must, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant must describe each alternative separately. The applicant must designate the information with the appropriate exhibit label identified in the following subsections:

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the NOI, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person;

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and persons upon whom the applicant will rely in meeting any facility standard adopted by the Council;

(C) If the applicant is a corporation:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the NOI; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon;

(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), the full name and business address of each of the applicant's full or partial owners;

(E) If the person submitting the NOI is an association of citizens, a joint venture or a partnership:

(i) The full name, official designation, mailing address, email address and telephone number of the

person responsible for submitting the NOI;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant must state that fact over the signature of each member;

(F) If the applicant is a public or governmental entity:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI; and

(ii) Written authorization from the entity's governing body to submit an NOI;

(G) If the applicant is an individual, the individual's mailing address, email address and telephone number; and

(H) If the applicant is a limited liability company:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;

(ii) The date and place of its formation;

(iii) A copy of its articles of organization and its authorization for submitting the NOI; and

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(b) **Exhibit B.** Information about the proposed facility, including:

(A) A description of the proposed energy facility, including as applicable:

(i) For electric power generating plants, the nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300;

(ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate, store, transmit, or transport electricity, useful thermal energy, or fuels;

(iii) Methods for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates, the applicant's plans for disposal of wastewater and storm water, and the location of disposal;



(iv) For thermal power plants, combustion turbine power plants, or other facilities designed to generate electricity from any gas, liquid, or solid fuels:

(I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy;

(II) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gasses into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;

(III) A discussion of the methods for the disposal of waste heat generated by the facility;

(v) For transmission lines, approximate transmission line voltage, load carrying capacity and type of current;

(vi) For pipelines, approximate operating pressure and delivery capacity in thousand cubic feet per day;

(vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;

(viii) For facilities to store liquefied natural gas, the approximate volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;

(B) A description of major components, structures and systems of each related or supporting facility; and

(C) The approximate dimensions of major facility structures and visible features.

(c) **Exhibit C.** A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility and all areas that might be temporarily disturbed during construction of the facility, including the approximate land area of each.

(d) **Exhibit D.** If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, identification of at least two proposed corridors, as defined in OAR 345-001-0010, or identification of a single proposed corridor with an explanation of why alternate corridors are unlikely to better meet the applicant's needs and satisfy the Council's standards. The applicant must include an explanation of the basis for selecting the proposed corridors and, for each proposed corridor, the information described in subsections (e), (g), (i), (j), (k), (L), ~~(M)~~ and ~~(P)~~ that is available from existing maps, aerial photographs, and a search of readily available literature.

(e) **Exhibit E.** Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, address, email address and telephone number of the agency or office responsible for each permit. For each permit, the applicant must provide a preliminary analysis of whether the permit should or should not be included in and governed by the site certificate.

(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; and

(B) In addition to incorporating the list in the NOI, the applicant must submit the list to the Department in an electronic format acceptable to the Department.

(g) **Exhibit G.** A map or maps showing:

(A) The proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(B) The proposed locations of the corridors the applicant has identified under subsection (d) in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(C) The study areas for the proposed facility as defined in OAR 345-001-0010;

(D) The topography of the study areas including streams, rivers, lakes, major roads and contour lines;

(E) All protected areas in the study area as defined in OAR 345-001-0010 for impacts to protected areas;

(F) The location of any potential waters of the state or waters of the United States that are on or adjacent to the site; and

(G) For energy generation facilities, the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services.

(h) **Exhibit H.** If the proposed facility is a non-generating energy facility for which the applicant must demonstrate need under OAR 345-023-0005, identification of the rule in division 23 of this chapter under which the applicant intends to demonstrate need and a summary statement of the need and justification for the proposed facility.

(i) **Exhibit I.** A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval under ORS 469.504(1)(a) or by seeking a Council determination under ORS 469.504(1)(b).

(j) **Exhibit J.** Identification of potential significant ~~potential~~ environmental impacts of construction and operation of the proposed facility on resources in the study areas, including those impacts affecting air quality, surface and ground water quality and availability, wildlife and wildlife habitat, threatened and endangered plant and animal species, historic, cultural and archaeological resources, scenic ~~and aesthetic areas~~ resources, recreation opportunities, land use, and wildfire risk.

(k) **Exhibit K.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of communities in the study area to provide the services listed in OAR 345-022-0110.

(L) Exhibit L. A list of all protected areas in the study area for impacts to protected areas identifying:

(A) The distance and direction of the protected area from the proposed facility;

(B) The basis for protection of the area, by reference to a specific subsection under OAR 345-001-0010(26); and

(C) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area;

~~(l)~~ **Exhibit LM.** Information about anticipated water use during construction and operation of the proposed facility, including:

(A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source;

(B) If a new water right is required, the approximate location of the points of diversion and the estimated quantity of water to be taken at each point; and

(C) For operation, the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions.

~~(m)~~ **Exhibit MN.** If the proposed facility would emit carbon dioxide, an estimate of the gross carbon dioxide emissions that are reasonably likely to result from the operation of the facility and a statement of the means by which the applicant intends to comply with the applicable carbon dioxide emissions standard under OAR 345-024-500.

~~(n)~~ **Exhibit NO.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant must analyze and describe any problems the applicant foresees in satisfying the requirements of any such statute, rule or ordinance.

~~(o)~~ **Exhibit OP.** A schedule stating when the applicant expects to submit a preliminary application for a site certificate.

(pg) **Exhibit PQ.** Evidence of consultation with the Legislative Commission on Indian Services to identify each appropriate tribe to consult with regarding the proposed facility's possible effects on Indian historic and cultural resources.

(2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required by section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the NOI. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the NOI, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant must include additional information in the NOI as needed to meet the requirements of section (1) of this rule.

(3) The applicant must include a table of contents in the NOI identifying the location of each exhibit required by this rule.

(4) The applicant must submit, to the Department, two printed copies of the NOI, and an electronic version of the NOI in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the NOI to the Department upon request. The applicant must prepare and distribute additional copies of the NOI as required by OAR 345-020-0040.

(5) The applicant or the applicant's representative must attend all public informational meetings on the NOI as described in OAR 345-015-0130 to discuss the proposed facility and to answer questions from the public. If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by section (1)(d), the applicant may present adjustments to the proposed corridor(s) at any public informational meeting. An adjustment is any change that is outside the boundaries of the corridors proposed in the NOI and may include an entirely new corridor.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.330

**AMEND: 345-021-0010**

**RULE TITLE:** Contents of an Application

**RULE SUMMARY:** Requires applicant to provide the name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over each protected area in the analysis area for the project as part of the Application for Site Certificate. Clarifies and expands requirements for exhibits related to scenic resources and visual impact assessments. Makes additional editorial changes for clarity and consistency. NOTE: Rule language has been modified from that presented in the Notice filed with the Secretary of State on May 27, 2022. Please see the Staff Report and Supporting Materials for Agenda Item B of the October 28, 2022, Energy Facility Siting Council Meeting for additional information.

**RULE TEXT:**

(1) The project order described in OAR 345-015-0160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant must include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant must designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the applicant must include information that addresses all provisions of this rule. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person;

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council;

(C) If the applicant is a corporation:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the application; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon;

(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), the full name and business address of each of the applicant's full or partial owners;

(E) If the applicant is an association of citizens, a joint venture or a partnership:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant must state that fact over the signature of each member;

(F) If the applicant is a public or governmental entity:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application; and

(ii) Written authorization from the entity's governing body to submit an application;

(G) If the applicant is an individual, the individual's mailing address, email address and telephone number; and

(H) If the applicant is a limited liability company:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its formation;

(iii) A copy of its articles of organization and its authorization for submitting the application; and

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(b) **Exhibit B.** Information about the proposed facility, construction schedule and temporary disturbances of the site, including:

(A) A description of the proposed energy facility, including as applicable:

(i) For electric power generating plants, the nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300;

(ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate, store, transmit, or transport electricity, useful thermal energy, or fuels;

(iii) A site plan and general arrangement of buildings, equipment and structures;

(iv) Fuel and chemical storage facilities, including structures and systems for spill containment;

(v) Equipment and systems for fire prevention and control;

(vi) For thermal power plants, combustion turbine power plants, or other facilities designed to generate electricity from gas, liquid, or solid fuels:

(I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy;

(II) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gasses into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;

(III) A description of energy flows within the facility, including power cycle and steam cycle diagrams, as appropriate;

(IV) A description of equipment and systems for disposal of waste heat generated by the facility;

(V) The fuel chargeable to power heat rate of the energy facility;

(vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;

(viii) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;

(B) A description of major components, structures and systems of each related or supporting facility;

(C) The approximate dimensions of major facility structures and visible features;

(D) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, a corridor selection assessment explaining how the applicant selected the corridors for analysis in the application. In the assessment, the applicant must evaluate the corridor adjustments the Department has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant must discuss the reasons for selecting the corridors, based upon evaluation of the following factors:

- (i) Least disturbance to streams, rivers and wetlands during construction;
  - (ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;
  - (iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads and existing pipeline or transmission line rights-of-way;
  - (iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;
  - (v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;
  - (vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist;
  - (vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards;
  - (viii) Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use;
- (E) If the proposed energy facility is a pipeline or transmission line or has, as a related or supporting facility, a transmission line or pipeline of any size:
- (i) The length of the pipeline or transmission line;
  - (ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened;
  - (iii) If the proposed transmission line or pipeline corridor follows or includes public right-of-way, a description of where the transmission line or pipeline would be located within the public right-of-way, to the extent known. If the applicant proposes to locate all or part of a transmission line or pipeline adjacent to but not within the public right-of-way, describe the reasons for locating the transmission line or pipeline outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the transmission line or pipeline outside the public right-of-way, based on those criteria;
  - (iv) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day and the diameter and location, above or below ground, of each pipeline;
  - (v) For transmission lines, the rated voltage, load carrying capacity, and type of current and a description of transmission line structures and their dimensions; and
- (F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction. Construction is defined in OAR 345-001-0010. The applicant must describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant must include an estimate of the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or



corridor, that the applicant anticipates or has performed as of the time of submitting the application.

(c) **Exhibit C.** Information about the location of the proposed facility, including:

(A) A map or maps showing the proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features, using a scale of 1 inch = 2000 feet or smaller when necessary to show detail;

(B) A description of the location of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the total land area (in acres) within the proposed site boundary, the total area of permanent disturbance, and the total area of temporary disturbance. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant must state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known; and

(C) For energy generation facilities, a map showing the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services;

(d) **Exhibit D.** Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:

(A) The applicant's previous experience, if any, in constructing and operating similar facilities;

(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted;

(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted;

(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility;

(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise;

(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program; and

(G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of

personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

(e) **Exhibit E.** Information about permits needed for construction and operation of the facility, including:

(A) Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, mailing address, email address and telephone number of the agency or office responsible for each permit;

(B) A description of each permit, the reasons the permit is needed for construction or operation of the facility and the applicant's analysis of whether the permit should or should not be included in and governed by the site certificate;

(C) For any state or local government agency permits, licenses or certificates that are proposed to be included in and governed by the site certificate, evidence to support findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules and standards applicable to the permit. The applicant may show this evidence:

(i) In Exhibit J for permits related to wetlands; or

(ii) In Exhibit O for permits related to water rights;

(D) For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision;

(E) If the applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit;

(iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard;

(F) If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the responsible agency has received a permit application;

(iii) The estimated the date when the responsible agency will complete its review and issue a permit decision; and

(G) The applicant's proposed monitoring program, if any, for compliance with permit conditions.

(f) **Exhibit F.** A list of the names and mailing addresses of property owners, as described in this subsection:

(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 is the subject of the application, where the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property which is the subject of the application, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 500 feet of the property which is the subject of the application, where the property is within a farm or forest zone;

(B) The applicant must submit an updated list of property owners as requested by the Department before the Department issues notice of any public hearing on the application for a site certificate as described in OAR 345-015-0220; and

(C) In addition to incorporating the list in the application, the applicant must submit the list to the Department in an electronic format approved by the Department.

(g) **Exhibit G.** A materials analysis including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

(h) **Exhibit H.** Information from reasonably available sources regarding the geological and soil stability within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0020, including:

(A) A geologic report meeting the Oregon State Board of Geologist Examiners geologic report guidelines. Current guidelines must be determined based on consultation with the Oregon Department of Geology and Mineral Industries, as described in paragraph (B) of this subsection;

(B) A summary of consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate methodology and scope of the seismic hazards and geology and soil-related hazards assessments, and the appropriate site-specific geotechnical work that must be performed before submitting the application for the Department to determine that the application is complete;

(C) A description and schedule of site-specific geotechnical work that will be performed before construction for inclusion in the site certificate as conditions;

(D) For all transmission lines, and for all pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends (for transmission lines), corners (for transmission lines), and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides, marginally stable slopes or potentially liquefiable soils that could be made unstable by the planned construction or experience impacts during the facility's operation;

(E) An assessment of seismic hazards, in accordance with standard-of-practice methods and best practices, that addresses all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection, and an explanation of how the applicant will design, engineer, construct, and operate the facility to avoid dangers to human safety and the environment from these seismic hazards. Furthermore, an explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters. The applicant must include proposed design and engineering features, applicable construction codes, and any monitoring and emergency measures for seismic hazards, including tsunami safety measures if the site is located in the DOGAMI-defined tsunami evacuation zone; and

(F) An assessment of geology and soil-related hazards which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility, in accordance with standard-of-practice methods and best practices, that address all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection. An explanation of how the applicant will design, engineer, construct and operate the facility to adequately avoid dangers to human safety and the environment presented by these hazards, as well as:

(i) An explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters; and

(ii) An assessment of future climate conditions for the expected life span of the proposed facility and the potential impacts of those conditions on the proposed facility.

(i) **Exhibit I.** Information from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:

(A) Identification and description of the major soil types in the analysis area;

(B) Identification and description of current land uses in the analysis area, such as growing crops, that require or depend on productive soils;

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills;

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils;

and

(E) The applicant's proposed monitoring program, if any, for adverse impact to soils during construction and operation.

(j) **Exhibit J.** Information based on literature and field study, as appropriate, about waters of this state, as defined under ORS 196.800, including:

(A) A description of all areas within the site boundary that might be waters of this state and a map showing the location of these features;

(B) An analysis of whether construction or operation of the proposed facility would adversely affect any waters of this state;

(C) A description of the significance of potential adverse impacts to each feature identified in (A), including the nature and amount of material the applicant would remove from or place in the waters analyzed in (B);

(D) If the proposed facility would not need a removal-fill authorization, an explanation of why no such authorization is required for the construction and operation of the proposed facility;

(E) If the proposed facility would need a removal-fill authorization, information to support a determination by the Council that the Oregon Department of State Lands should issue a removal-fill permit, including information in the form required by the Department of State Lands under OAR Chapter 141 Division 85; and

(F) A description of proposed actions to mitigate adverse impacts to the features identified in (A) and the applicant's proposed monitoring program, if any, for such impacts.

(k) **Exhibit K.** Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant must state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 469.504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant must:

(A) Include a map showing the comprehensive plan designations and land use zones in the analysis area;

(B) If the applicant elects to obtain local land use approvals:

(i) Identify the affected local governments from which land use approvals will be sought;

(ii) Describe the land use approvals required in order to satisfy the Council's land use standard;

(iii) Describe the status of the applicant's application for each land use approval;

(iv) Provide an estimate of time for issuance of local land use approvals;

(C) If the applicant elects to obtain a Council determination on land use:

(i) Identify the affected local governments;

(ii) Identify the 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 that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria;

(iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes;

(iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals;

(v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2); and

(D) If the proposed facility will be located on federal land:

(i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land;

(ii) Explain any differences between state or local land use requirements and federal land management requirements;

(iii) Describe how the proposed facility complies with the applicable federal land management plan;

(iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval;

(v) Provide an estimate of time for issuance of federal land use approvals; and

(vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.

(L) **Exhibit L.** Information about the potential impacts of the proposed facility's impact on protected areas in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:

(A) A list of the all protected areas within the analysis area, showing identifying:

~~(i) The distance and direction of the protected area from the proposed facility; and~~

~~(ii) The basis for protection by reference to a specific subsection under of OAR 345-022-0010(1), 345-001-0010(926); and~~

~~(iii) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area;~~

~~(B) A map showing the location of the proposed facility in relation to the protected areas listed in OAR 345-022-0040 located within the analysis area; and~~

(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:

(i) Noise resulting from facility construction or operation;

(ii) Increased traffic resulting from facility construction or operation;

(iii) Water use during facility construction or operation;

(iv) Wastewater disposal resulting from facility construction or operation;

(v) Visual impacts of facility structures or plumes, including, but not limited to, changes in landscape character or quality; and

(vi) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 Areas as described in OAR 340-204-0050.

(m) **Exhibit M.** Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection requires the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant must include:

(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

(B) The type and amount of the applicant's proposed bond or letter of credit to meet the requirements of OAR 345-022-0050; and

(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility.

(n) **Exhibit N.** If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, information about the need for the facility, providing evidence to support a finding by the Council as required by OAR 345-023-0005, including:

(A) Identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need;

(B) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule:

(i) Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need;

(ii) The name, address and telephone number of the person responsible for preparing each energy resource plan identified in subparagraph (i);

(iii) For each plan reviewed by a regulatory agency, the agency's findings and final decision, including:

(I) For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or

(II) For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency's decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Department can obtain a complete copy of the public record;

(iv) Identification of the sections of the short-term action plan that call for the acquisition of the proposed facility or, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility;

(v) The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility is called for in the plan;

(C) In addition to the information described in paragraph (B), if the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon:

(i) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in paragraph (B);

(ii) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence;

(iii) The expected annual emissions in tons of nitrogen oxides, PM-10 particulate, sulfur dioxide, carbon dioxide and mercury and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan;

(D) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant must include the information described in paragraph (G) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (G), the applicant must provide a list of citations to



the sections of the energy resource plan that contain the information;

(E) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant must include the information described in paragraph (F) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (F), the applicant must provide a list of citations to the sections of the energy resource plan that contain the information;

(F) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, the system reliability rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant must include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility;

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for electricity and firm annual electricity sales for the area to be served by the proposed facility. The applicant must separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant must include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:

(I) Existing federal, state or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant must include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources and committed new resources minus expected resource retirements or displacement. In the forecast, the applicant must list each resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant must include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant must include documentation of assumptions and calculations supporting the table. The applicant must evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

(I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(II) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(III) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility;

(IV) Adding standard sized smaller or larger transmission line capacity;

(viii) The earliest and latest expected in-service dates of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates; and

(G) If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas under OAR 345-023-0040, the economically reasonable rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant must include firm demands and resource availability for each of the years from the date of submission of the application to at least five years after the expected in-service date of the proposed facility. In the tables, the applicant must list flowing supply and storage supply separately;

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant must separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant must accompany the tables with load duration curves of firm capacity and interruptible demands for the most recent historical year, the year the facility is expected to be placed in service and the fifth year after the expected in-service date. In the forecast of firm capacity demands, the applicant must include a discussion of how the forecast incorporates reductions in firm capacity demand resulting from:

(I) Existing federal, state or local building codes and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

- (iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant must include, as existing and committed firm capacity resources, existing pipelines, storage facilities, and scheduled and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant must list each committed resource separately;
- (iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;
- (v) A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in subparagraph (iii);
- (vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;
- (vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in subparagraphs (viii) or (ix). In the discussion, the applicant must include a table showing the amounts of firm capacity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant must include documentation of assumptions and calculations supporting the table;
- (viii) In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:
- (I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (II) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;
  - (III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility;
  - (IV) Adding standard sized smaller or larger pipeline capacity;
- (ix) In an application for a proposed liquefied natural gas storage facility, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:
- (I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (II) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;
  - (III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility;
  - (IV) Adding smaller or larger liquefied natural gas storage capacity; and

(x) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates.

(o) **Exhibit O.** Information about anticipated water use during construction and operation of the proposed facility. The applicant must include:

(A) A description of the use of water during construction and operation of the proposed facility;

(B) A description of each source of water and the applicant's estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions;

(C) A description of each avenue of water loss or output from the facility site for the uses described in (A), the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions and the final disposition of all wastewater;

(D) For thermal power plants, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water during operation, based on annual average conditions;

(E) If the proposed facility would not need a groundwater permit, a surface water permit or a water right transfer, an explanation of why no such permit or transfer is required for the construction and operation of the proposed facility;

(F) If the proposed facility would need a groundwater permit, a surface water permit or a water right transfer, information to support a determination by the Council that the Water Resources Department should issue the permit or transfer of a water use, including information in the form required by the Water Resources Department under OAR Chapter 690, Divisions 310 and 380; and

(G) A description of proposed actions to mitigate the adverse impacts of water use on affected resources.

(p) **Exhibit P.** Information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in subsection (q) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant must include:

(A) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey;

(B) Identification of all fish and wildlife habitat in the analysis area, classified by the general fish and wildlife habitat categories as set forth in OAR 635-415-0025 and the sage-grouse specific habitats described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025 (core, low density, and general habitats), and a description of the characteristics and condition of that habitat in the analysis area, including a table of the areas of permanent disturbance and temporary disturbance (in acres) in each habitat category and subtype;

(C) A map showing the locations of the habitat identified in (B);

(D) Based on consultation with the Oregon Department of Fish and Wildlife (ODFW) and appropriate

field study and literature review, identification of all State Sensitive Species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW;

(E) A baseline survey of the use of habitat in the analysis area by species identified in (D) performed according to a protocol approved by the Department and ODFW;

(F) A description of the nature, extent and duration of potential adverse impacts on the habitat identified in (B) and species identified in (D) that could result from construction, operation and retirement of the proposed facility;

(G) A description of any measures proposed by the applicant to avoid, reduce, or mitigate the potential adverse impacts described in (F) in accordance with the general fish and wildlife habitat mitigation goals and standards described in OAR 635-415-0025 and a description of any measures proposed by the applicant to avoid, minimize, and provide compensatory mitigation for the potential adverse impacts described in (F) in accordance with the sage-grouse specific habitat mitigation requirements described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025, and a discussion of how the proposed measures would achieve those goals and requirements; and

(H) A description of the applicant's proposed monitoring plans to evaluate the success of the measures described in (G).

(q) **Exhibit Q.** Information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant must include:

(A) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2) and ORS 564.105(2) that may be affected by the proposed facility;

(B) For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it;

(C) For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact;

(D) For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3);

(E) For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species;

(F) For each animal species identified under (A), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to

cause a significant reduction in the likelihood of survival or recovery of the species; and

(G) The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species.

(r) **Exhibit R.** An analysis of ~~significant~~ potential visual impacts of the proposed facility, if any, on ~~scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located~~ significant or important scenic resources within the analysis area, providing evidence to support a finding by the Council ~~as required by~~ under OAR 345-022-0080, including:

~~(A) A list of the~~ An inventory of scenic resources identified as significant or important in a land use management plan adopted by one or more local, tribal, state, and/or federal plans that address government or agency applicable to lands within the analysis area for scenic resources. The applicant must provide a list of the land management plans reviewed in developing the inventory and a copy of the relevant portion of the plans;

~~(B) Identification and description of the scenic resources identified as significant or important in the plans listed in (A), including a copy of the portion of the management plan that identifies the resource as significant or important;~~

(B) A map or maps showing the location of the scenic resources described under paragraph (A), in relation to the site of the proposed facility;

(C) A description of the methodology the applicant used to identify and assess ~~significant potential adverse~~ visual impacts to the scenic resources identified in paragraph (A);

(D) Identification of potential visual impacts to the scenic resources identified in paragraph (A), including, but not limited to, impacts such as:

(i) Loss of vegetation or alteration of the landscape as a result of construction or operation; ~~and~~

(ii) ~~Changes in landscape character or quality due~~ Visual impacts of facility structures or plumes, including, but not limited to changes in landscape character or quality; and

(iii) Loss of visibility due to air emissions or other pollution resulting from the construction or operation of the proposed facility;

(E) An assessment of the significance of the visual impacts described under paragraph (D);

~~(F)~~ A description of the measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts; and

~~(E) A map or maps showing the location of the scenic resources described under (B); and~~

~~(F)~~ The applicant's proposed monitoring program, if any, for impacts to scenic resources.

(s) **Exhibit S.** Information about historic, cultural and archaeological resources. Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.345(11). The applicant must submit such information separately, clearly marked as “confidential,” and shall request that the Department and the Council keep the information confidential to the extent permitted by law. The applicant must include information in Exhibit S or in confidential submissions providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

(A) Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places;

(B) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(C) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(D) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those resources that includes at least the following:

(i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in paragraphs (A), (B) and (C);

(ii) The results of the discovery measures described in subparagraph (i), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended;

(iii) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subparagraph (i) or discovered during construction; and

(E) The applicant’s proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility.

(t) **Exhibit T.** Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

(A) A description of the recreational opportunities in the analysis area that includes information on the factors listed in OAR 345-022-0100(1) as a basis for identifying important recreational opportunities;

(B) A description of any ~~significant~~ potential adverse impacts to the important opportunities identified in paragraph (A) including, but not limited to:

(i) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation;

(ii) Noise resulting from facility construction or operation;

(iii) Increased traffic resulting from facility construction or operation;

(iv) Visual impacts of facility structures or plumes, including, but not limited to, changes in landscape character or quality;

(C) An evaluation of the significance of the potential adverse impacts identified under paragraph (B);

(€D) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts identified in paragraph (B);

(ÐE) A map of the analysis area showing the locations of important recreational opportunities identified in paragraph (A); and

(€F) The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities.

(u) **Exhibit U.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of public and private providers in the analysis area to provide the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by OAR 345-022-0110. The applicant must include:

(A) The important assumptions the applicant used to evaluate potential impacts;

(B) Identification of the public and private providers in the analysis area that would likely be affected;

(C) A description of any likely adverse impact to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;

(D) Evidence that adverse impacts described in (C) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and

(E) The applicant's proposed monitoring program, if any, for impacts to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110.

(v) **Exhibit V.** Information about wildfire risk within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0115, including but not limited to, a draft Wildfire Mitigation Plan that satisfies the requirements of OAR 345-022-0115(1)(b).

(W) **Exhibit W.** Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support a finding by the Council as required by OAR 345-022-0120. The applicant must include:

(A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate, including an estimate of the amount of solid waste and wastewater;



(B) A description of any structures, systems and equipment for management and disposal of solid waste, wastewater and storm water;

(C) A discussion of any actions or restrictions proposed by the applicant to reduce consumptive water use during construction and operation of the facility;

(D) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A);

(E) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of solid waste, wastewater and stormwater during construction and operation of the facility;

(F) Evidence that adverse impacts described in (D) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and

(G) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.

(x) **Exhibit X.** Information about site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0050(1). The applicant must include:

(A) The estimated useful life of the proposed facility;

(B) Specific actions and tasks to restore the site to a useful, non-hazardous condition;

(C) An estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition;

(D) A discussion and justification of the methods and assumptions used to estimate site restoration costs; and

(E) For facilities that might produce site contamination by hazardous materials, a proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.

(y) **Exhibit Y.** Information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-035-0035. The applicant must include:

(A) Predicted noise levels resulting from construction and operation of the proposed facility;

(B) An analysis of the proposed facility's compliance with the applicable noise regulations in OAR 340-035-0035, including a discussion and justification of the methods and assumptions used in the analysis;

(C) Any measures the applicant proposes to reduce noise levels or noise impacts or to address public complaints about noise from the facility;

(D) Any measures the applicant proposes to monitor noise generated by operation of the facility; and

(E) A list of the names and addresses of all owners of noise sensitive property, as defined in OAR 340-035-0015, within one mile of the proposed site boundary.

(z) **Exhibit Z.** If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

(A) The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact;

(B) The predicted locations and frequency of occurrence of ice formation on surfaces and ground level fogging and an assessment of significant potential adverse impacts, including, but not limited to, traffic hazards on public roads;

(C) The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses;

(D) Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift;

(E) The assumptions and methods used in the plume analysis; and

(F) The applicant's proposed monitoring program, if any, for cooling tower plume impacts.

(aa) **Exhibit AA.** If the proposed energy facility is a transmission line or has, as a related or supporting facility, a transmission line of any size:

(A) Information about the expected electric and magnetic fields, including:

(i) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way;

(ii) The type of each occupied structure, including but not limited to residences, commercial establishments, industrial facilities, schools, daycare centers and hospitals, within 200 feet on each side of the proposed center line of each proposed transmission line;

(iii) The approximate distance in feet from the proposed center line to each structure identified in (A);

(iv) At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line;

(v) Any measures the applicant proposes to reduce electric or magnetic field levels;

(vi) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line;

(vii) The applicant's proposed monitoring program, if any, for actual electric and magnetic field levels; and

(B) An evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways.

(bb) **Exhibit BB.** Any other information that the Department requests in the project order or in a notification regarding expedited review.

(cc) **Exhibit CC.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant must identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by other materials in the application, the applicant must include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

(dd) **Exhibit DD.** If the proposed facility is a facility for which the Council has adopted specific standards, information about the facility providing evidence to support findings by the Council as required by the following rules:

(A) For wind energy facilities, OAR 345-024-0010 and 345-024-0015;

(B) For surface facilities related to underground gas storage reservoirs, OAR 345-024-0030, including information required by OAR 345-021-0020; and

(C) For any transmission line under Council jurisdiction, OAR 345-024-0090.

(D) For a fossil-fueled power plant or other facility that emits carbon dioxide, OAR 345-024-0500 to 345-024-0720, including the information required by OAR 345-021-0021.

(2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required under section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant must include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.

(3) The applicant must include a table of contents in the preliminary application identifying the location of each exhibit required by this rule.

(4) The applicant must submit, to the Department, an original and a copy of the printed preliminary application, and a non-copy-protected electronic version of the preliminary application in a format acceptable to the Department. The applicant must submit additional printed copies of the preliminary application to the Department upon request. The applicant must prepare and distribute

additional copies of the application as required by OAR 345-021-0050.

STATUTORY/OTHER AUTHORITY: ORS 469.373, 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.350, 469.370, 469.413, 469.501, 469.503, 469.504

**AMEND: 345-022-0040**

**RULE TITLE:** Protected Areas

**RULE SUMMARY:** Removes the effective date for protected area designations, allowing the Council to consider impacts to all protected areas that are designated prior to the filing of a complete application. Relocates definition of “protected area” to OAR 345-001-0010. Clarifies exception for when a linear facility may be located within a Protected Area. Specifies 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. Makes additional editorial changes for clarity and consistency. NOTE: Rule language has been modified from that presented in the Notice filed with the Secretary of State on May 27, 2022. Please see the Staff Report and Supporting Materials for Agenda Item B of the October 28, 2022, Energy Facility Siting Council Meeting for additional information.

**RULE TEXT:**

~~(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:~~

~~(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;~~

~~(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;~~

~~(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;~~

~~(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;~~

~~(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;~~

~~(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;~~

~~(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;~~

~~(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;~~

~~(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;~~

~~(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR chapter 142;~~

~~(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;~~

~~(l) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;~~

~~(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:~~

~~Coastal Oregon Marine Experiment Station, Astoria.~~

~~Mid-Columbia Agriculture Research and Extension Center, Hood River.~~

~~Agriculture Research and Extension Center, Hermiston.~~

~~Columbia Basin Agriculture Research Center, Pendleton.~~

~~Columbia Basin Agriculture Research Center, Moro.~~

~~North Willamette Research and Extension Center, Aurora.~~

~~East Oregon Agriculture Research Center, Union.~~

~~Malheur Experiment Station, Ontario.~~

~~Eastern Oregon Agriculture Research Center, Burns.~~

~~Eastern Oregon Agriculture Research Center, Squaw Butte.~~

~~Central Oregon Experiment Station, Madras.~~

~~Central Oregon Experiment Station, Powell Butte.~~

~~Central Oregon Experiment Station, Redmond.~~

~~Central Station, Corvallis.~~

~~Coastal Oregon Marine Experiment Station, Newport.~~

~~Southern Oregon Experiment Station, Medford.~~

~~Klamath Experiment Station, Klamath Falls.~~

~~(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;~~

~~(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;~~

~~(p) State wildlife areas and management areas identified in OAR chapter 635, division 8.~~

(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.

(2) Notwithstanding section (1)(a), the Council may issue a site certificate for ~~a transmission line or a natural gas pipeline or for a facility located outside a protected area:~~

(a) A facility that includes a transmission line or, natural gas pipeline, or water pipeline as a related or supporting facility located in a protected area identified in section (1), if other if the Council determines that other reasonable alternative routes or sites have been studied and determined by the Council to have greater impacts, that the proposed route or site is likely to result in fewer adverse impacts to resources or interests protected by Council standards; or

(b) Notwithstanding section (1), the Council may issue a site certificate for sSurface 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 determined by the Council to be are unsuitable.

(3) The provisions of section (1) do not apply to:

(a) A transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher; or

(b) A natural gas pipeline routed within 500 feet of an existing utility right-of-way containing at least

one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

(4) The Council shall apply the version of this rule 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. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.501

STATUTES/OTHER IMPLEMENTED: ORS 469.501



**AMEND: 345-022-0080**

**RULE TITLE:** Scenic Resources

**RULE SUMMARY:** Removes reference to analysis area to allow the Council to consider evidence introduced into the record related to impacts to scenic resources and recreational opportunities outside the analysis area. Establishes that scenic resources identified as significant or important under state or multi-jurisdictional land management plans are protected under standard. Specifies 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. Makes additional editorial changes for clarity and consistency. NOTE: Rule language has been modified from that presented in the Notice filed with the Secretary of State on May 27, 2022. Please see the Staff Report and Supporting Materials for Agenda Item B of the October 28, 2022, Energy Facility Siting Council Meeting for additional information.

**RULE TEXT:**

(1) ~~Except for facilities described in section (2),~~ 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 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~~ In issuing such a site certificate, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility impose conditions of approval to minimize the potential significant adverse visual impacts from the design, construction, and operation of the facility on 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 a current land use management plan adopted by one or more local, tribal, state, or federal government or agency.

(4) The Council shall apply the version of this rule 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. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.501

STATUTES/OTHER IMPLEMENTED: ORS 469.501

**AMEND: 345-022-0100**

**RULE TITLE:** Recreation

**RULE SUMMARY:** Makes editorial changes for clarity and consistency. Specifies 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. NOTE: Rule language has been modified from that presented in the Notice filed with the Secretary of State on May 27, 2022. Please see the Staff Report and Supporting Materials for Agenda Item B of the October 28, 2022, Energy Facility Siting Council Meeting for additional information.

**RULE TEXT:**

~~(1) Except for facilities described in section (2), to~~ 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.~~

(2) The Council shall must consider the following factors in judging the importance of a recreational opportunity:

- (a) Any special designation or management of the location;
- (b) The degree of demand;
- (c) Outstanding or unusual qualities;
- (d) Availability or rareness;
- (e) Irreplaceability or irretrievability of the opportunity.

(23) 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, In issuing such a site certificate, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility impose conditions of approval to minimize the potential significant adverse impacts from the design, construction, and operation of the facility on important recreational opportunities.

(4) The Council must apply the version of this rule 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. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.501

STATUTES/OTHER IMPLEMENTED: ORS 469.501