

CONTESTED CASE REQUEST THREE : FAILURE TO PROVIDE NOTICE TO THE PUBLIC OF THEIR RIGHT TO PARTICIPATE IN CONTESTED CASES

I responded to the general questions which are required in requesting a contested Case in a separate document which lists this Contested Case as “Attachment 3: Failure to Provide public Notice of Right to Participate in Contested Cases”

I properly presented this issue at approximately 2:20 TO 2:22 of the recording for the 7/18/23 Public Hearing for Amendment 1 of the B2H Site Certificate. The issue was brought forward on July 18 and was included in my request for additional time to comment on at least one of the Site Certificate Conditions due to the fact that there was no notice and I was unaware that I could comment and request a contested case on changed site certificate conditions. ODOE argued that I was wrong and that they had not failed to provide notice per their rules. I disagree with that and request this Contested Case to resolve the issue. This request and attachments support the fact that there are legitimate reasons for my request that this issue be heard. The Department is required to provide complete and accurate information regarding the scope of changes included in Amendment 1. In order to meet the requirement that the public be provided information necessary to participate in the Contested Case Process. Attached is a letter to Council which I sent following that Council Meeting which requests Council include on their agenda in the August meeting discussions regarding this issue. The requested discussions did not occur, and were put off until the September meeting. The September meeting will not occur until after all Contested Case

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requests are submitted, and there is no formal way to argue this issue. (Exhibit 7—email to Council) which to my knowledge, still has not been forwarded to council.)

I am not aware of any other petitioner submitting this issue. I am in the best position to represent the Stop B2H Coalition, the public interest and myself as an individual regarding this issue. I am co-chair of Stop B2H, have previously represented Stop B2H before the public. I have represented the public interest during the initial Contested Cases regarding the B2H Transmission line, and have experience participating on RAC's and County Committees representing the public interests. I personally am impacted by this transmission line due to the impacts it will have on wildlife, hunting, fishing, sight seeing and forest activities which I regularly participate in.

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I raised the issue of a failure to tell the public the scope of their opportunities to participate in the Contested Case Hearings. During my testimony to Council on July 18, 2023.

It is clear that the Oregon Department of Energy is aware of the fact that they did not provide complete information to the public regarding their opportunities, even though they argued against my concerns at the time. The Proposed Order on Request for Amendment 1 includes a change on line 11 and 12 that removes the words "would add area to the site boundary" and changes it to "include site boundary expansion and other changes such as new or amended conditions." They also added a third item that the council must conclude which is lines 20 through 23 stating: (Exhibit 3)

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“3. The facility, with proposed RFAI changes, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed RFA1 changes”(Exhibit 3)

STATEMENT OF THE ISSUE OF THIS CONTESTED CASE REQUEST

The Oregon Department of Energy (ODOE) Failed to inform the public and the Energy Facility Siting Counsel (EFSC) that they had an opportunity to comment and request Contested Cases on Amendment 1 changes to the site certificate conditions. (This Contested Case Request is Regarding a failure of the Oregon Department of Energy (ODOE) to notify the Energy Facility Siting Council (EFSC) and in turn their responsibility to notify the public of the opportunity to comment on the Amendment I changes to site certificate conditions in order to participate in Contested Cases on those changes . These changes will impact the entire development. In addition, ODOE instructed the Council to evaluate the public comments and Contested Case requests based upon the impacts to the area added to the site in Amendment 1. The failure to notify the public and EFSC of the opportunity for public participation in the process has resulted in a failure to comply with OAR 345-027-0375 (4) which requires the **Department to explain the amendment process, including the means and opportunities for the general public to participate in the process.** The failure to provide information to the public and the counsel regarding opportunities for public participation in the process of making changes to the existing site certificate conditions means that no final site certificate can be issued until the public is provided this opportunity.

Changes to Conditions included in the Original Site Certificate which were made in Amendment 1 include several covered by OAR 345-027-0350(4) which impact the operation of the development and how they propose to comply with Council Standards. This document identifies several Site Certificate Amended, Removed and Added site Certificate Conditions which fail to comply with OAR 345-027-0350(4) which states an amendment is required to: Design, construct, or operate a facility in a manner different from the description in the site certificate, if the proposed change:

- (a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard.
- (b) Could require a new condition or a change to a condition in the site certificate.
 - a. Examples of changes that were newly included as Site Certificate Conditions which the public must receive notification of their right to participate:
 - i. The Amendment 1 removed the requirement that the Blasting Plan be submitted to the department, Page 52 of the First Amended Site Certificate. The amended site certificate condition also removed the Agency Review Process to comply with OAR 345-025-0016 which provided for local, state, and federal agencies to review and provide input on changes to this plan. Blasting has been an issue that the public is very concerned with due to the potential consequences to the safety of people, wildlife, wells, springs and homes resulting from blasting activities and the potential that there will be damages to structures, springs, wells and other water resources. See

Page 1 and 2 of Idaho Power's "Framework Blasting Plan" included in the Proposed Order. The Site Certificate removes the entire first two pages providing the process for Counties, and other agencies to have input into this plan. This change removes local control over the contents of this plan.

- ii. Page 64 of the First Amended Site Certificate removes the requirement that developer include in their annual report to the Department restoration activities, and applicable sections of the Reclamation and Revegetation Plan by county and area of temporary disturbances. This requirement supports the necessity that there be monitoring of the actions of the developer to show compliance with the requirements of the site certificate.
- iii. The Amended Site Certificate removes the requirement under OAR 345-025-0016 that agencies be consulted regarding the Right of Way Clearing Assessment. The change removes the opportunity for local, state and federal agencies to review the draft plan for Right of Way Clearing Assessment covering construction activities prior to finalization. This plan not only will have significant impacts on counties and private landowners, but it also must address requirements of the Forest Practices Act described in Contested Case 1.

These changes and multiple additional ones made in the Proposed Order and Site Certificate for Amendment 1 were made in a manner that denied the public and impacted agencies notice that they have a right to comment and object to the

changes. The applicant failed to comply with OAR 345-027-0360 including notice requirements to all property owners and submission of the information required to amend Site Certificate Conditions.

The Site Certificate for Amendment I of the B2H can not be legitimately issued due to the fact that it conflicts with the requirements of OAR 345-027-0367. **OAR 345-027-0367 requires the Department to explain the amendment process, including the means and opportunities for the general public to participate in the process. Neither the written or verbal explanations indicated that the public had the right to comment on and request contested cases on changes to the Site Certificate issued originally for this development.** The Council and the public were lead to believe that the only comments that were under consideration in Amendment I were comments regarding the Bond Amount and comments regarding whether the areas added to the site certificate complied with council standards.

Information contained in Notices Provided to the Public:

1. *The public notice of an opportunity to comment on the Draft Proposed Order stated that the public could comment on anything in the Site Certificate, but it states that the **Council would only consider the impacts to the area being added to the site.** (Exhibit 6, Page 4 top of page) This public notice also states: .
2. *"After Council reviews the DPO and considered all comments received on the record of the public hearing as described in this notice ODOE will issue a Proposed Order. The Proposed Order will include ODOE staff's evaluation of issues raised in comments received on the record of the DPO as well as

those by EFSC, and will include any necessary changes to its recommended findings of fact, conclusions of law and conditions.” (Exhibit 6, Page 3 stated under the heading: Proposed Order.)

3. “Council must determine whether the preponderance of evidence on the record supports that the **portions of the facility within the area added to the site boundary** by the amendment complies with all laws, and Council standards applicable to an original site certificate application” (Exhibit 6, Page 4, last sentence paragraph at top of page.)

Information contained in notices provided to the Council:

1. * Council reviews the DPO and consider all comments received on the record of the public hearing as described in this notice ODOE will issue a Proposed Order. The Proposed Order will include ODOE staff’s evaluation of issues raised in comments received on the record of the DPO as well as those by EFSC, and will include any necessary changes to its recommended findings of fact, conclusions of law and conditions.” (Exhibit 6, Page 3 comment under Proposed Order.)
2. ***Council must determine whether the preponderance of evidence on the record supports that the portions of the facility within the area added to the site boundary by the amendment compliers with all laws, and Council standards applicable to an original site certificate application”** (Exhibit 6, Page 4, last sentence paragraph at top of page.)
3. The council memo from ODOE with information regarding the public hearing on Amendment 1 of the B2H transmission line. It states:

1. *The Amendment ! contains information regarding the addition of alternative transmission line routes, additional roads and amends language of site certificate conditions to support implementation.”
(Exhibit 2, Page 2, top of page)
 - a. Note: The reference to Site Certificate Condition Changes fails to identify the fact that the conditions are substantial, involve multiple previously approved Site Certificate Conditions and will have a significant impact on the construction and operation of the facility for the life of the Site Certificate.
2. *Council was instructed that they were to review the development based upon the impacts to the areas added to the site boundary. Both the public and the Council were told in writing that the only items council was to consider was compliance with EFSC rules regarding the area added to the site. **Scope of Council Review under OAR 345-027-0375 is stated as determining that the area added to the site boundary by the amendment complies with all laws and Council standards applicable to a new site certificate. It also states that the scope of Council’s Review for RFA1 does not include findings of fact or conclusions of law that apply to the approved facility as described in the ASC and Final Order on ASC”**
((Exhibit 2, Page bottom of page 3 and top of Page 4)
 - a. Note: These statements indicated to me and others that there was no reason to comment on the impact of changed site certificate conditions on the entire development. Since they would not be considered under the Contested Case Rules.

I had hoped that there would be an opportunity to resolve this matter in front of Council at the August EFSC meeting. I sent the attached memo (Exhibit 7 to Todd Cornett and requested that it be an agenda item for the August EFSC meeting. I received an email the day before the August meeting saying that the memo would not be on the agenda, but would be for the September meeting. Given that there will be no discussions regarding the issue of the public not receiving notice of their rights regarding multiple Site Certificate changes included in Amendment 1 of the B2H Site Certificate, I am timely requesting a Contested Case to address the issue due to the significance it has to the public at large and the public interest which I am representing.

This contested case is objecting to all changes in the Site Certificate Condition language contained in the original Site Certificate for the Boardman to Hemingway Transmission Line which are included in the Amendment I Site Certificate and order.

CONCLUSION AND FACTS RESULTING IN MY REQUEST:

Stop B2H Coalition and the public were not provided notice of the opportunity to make public comment to support a contested case request on changes to Site Conditions. There was no notification of the opportunity to participate regarding these condition changes. The Amended Site Certificate states that comments are not being considered regarding the changed conditions. Council denied me the opportunity to provide complete comments on one of several issues that are of concern. Legal council for EFSC stated concerns that allowing me or anyone the opportunity to comment based upon the failure of ODOE and Council to follow their own rules could create an unwanted precedent. I was unable to develop individual Contested Cases on the issues of concern due to a great extent to the

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above barriers. I want to clearly state that in the role of representative for Stop B2H Coalition as well as the public interest, there would have been comments objecting to the changes in Conditions had we and the public been made aware of the opportunity to object to the condition changes.

In the ODOE presentation prior to the start of the public hearing on July 18, 2023, at 1:54:06 the presenter showed a copy of OAR 345-027-0375 (c) stating a review for amendment not described above must show that the facility with changes comply with the rule. None of the other material presented included item(c) which is the section of the rule pertaining to the changed site certificate conditions.

Following are additional examples of Site Certificate Condition changes which the public must be provided an opportunity to comment on as a precursor to requesting Contested Cases if they chose to do so.

A non-exclusive list of site certificate conditions which were changed from those in the original Site Certificate include:

- a. Removed the Fire Prevention and Suppression Plan and also the Fire Prevention and Risk Assessment Plan requirements from the Site Certificate for the B2H Transmission line from the previously approved Site Certificate and changed the requirements to require only the plan approved by the Oregon Public Utilities Commission referenced in Administrative Rule OAR 345-022-0115 which became effective 7/29/2022 This plan should not be replacing both previously required Fire Protection Plans. This

change removed the requirement that the developer coordinate with local counties regarding county specific requirements that need to be included in two Wildfire Plans, Condition 6 requiring a Fire Prevention and Suppression and Condition 7 requiring a Wildfire Mitigation Plan. (Page 198 of Exhibit 3) Given the multiple comments concerned about the Fire Prevention and Risk Assessment Plan from the Counties, it would seem reasonable to believe that there would be significant concern about this changed site certificate condition which removes the Counties from having input into fire protection and places all control over this important issue in the Oregon Public Utilities Commission and the Oregon Department of Energy.

- b. Changes to the Structural Standard on Blasting Plan—Condition 4
The change is justified by stating that “The recommended condition amendment would only remove the process of final review and approval for elements of the plan for which neither the Department nor reviewing agencies have technical expertise or jurisdictional authority.” The Oregon Department of Energy lacks knowledge regarding the technical expertise available to reviewing agencies and should not be making this assessment or decision absent their involvement.
- c. Fish and wildlife Condition 2 regarding the Vegetation Management Plan including removing the requirement that the plan be reviewed by the reviewing agency process.
- d. Revisions to Noise Control Condition 5

- e. Amendments and Deleted Conditions regarding the Removal-Fill Permit.

There are multiple additional changes with significant impacts which the public has a right to be provided means and opportunity to participate in.

OAR 345-027-0367 requires the Department to explain the amendment process, including the means and opportunities for the general public to participate in the process. Neither the written or verbal explanations indicated that the public had the right to comment on and request contested cases on changes to the Site Certificate issued originally for this development.

The first paragraph, Page 1 which references the changes to the original Site Certificate simply states “amendment of site certificate language to support implementation and interpretation”. This language would lead the public to believe that 1) the changes are going to be insignificant and 2) there is no indication that the council will be considering comments regarding these changes.

The failure to accurately state the methods the public could use and areas of influence were further reinforced in the July 5, 2023 notice to council regarding the staff recommendations that they approve the Draft Proposed Order. On Page 2, first paragraph it describes the Site Certificate changes as “c) amend language of site certificate conditions to support implementation”.

1. The failure of ODOE to provide notice to the public regarding the fact that the public can object to the multiple significant impacts on the operations

regarding this transmission line that are incorporated into Site Certificate. The conditions represent actions which avoid, reinterpret, hide impacts of the changes and exceed the authority of the department and EFSC. By implementing changes while denying the public an opportunity to comment or object to the actions.

All changes to the original Site Certificate Conditions require a full review of the entire site, the opportunity for public comment and to request a Contested Case regarding the changes.

The notice of Draft Proposed Order and announcing this hearing states: “Under the Scope of Council’s Review for RFA1, Council must determine whether the preponderance of evidence on the record supports that the **portions of the facility within the area added to the site boundary by the amendment** complies with all laws and Council standards applicable to an original site certificate application; and the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

This amendment included adding additional area to the site boundary, which provides the basis for the statement regarding the scope of Council review. This section specifically States that the review does not include consideration of previous site certificate conditions.but it also included requests for changes to the original site certificate. Because of this, the council must also review the Amendment Request under OAR 345-027-0375(2)(c)

Statutes and Rules supporting this request for Contested Case

OAR 345-027-0375(2)(c) says:

“For any other requests for amendment not described above, **the facility, with the proposed change, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change;**”^{ntation}

ORS 469.370

(3) Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department’s proposed order. Such issues shall be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue. A statement of this requirement shall be made at the commencement of any public hearing on the application.

The Scope of Council’s Review for RFA1 does not include findings of fact or conclusions of law that apply to the approved facility as described in the ASC and *Final Order on ASC*, including transmission line routes and related or supporting facilities.

ODOE defined the **“SCOPE OF COUNCIL REVIEW (OAR 345-027-0375) in the following manner:**

For amendments to the site certificate that would add area to the site boundary, the focus of Council Review under OAR 345-027-375 requires that Council determine

whether the preponderance of evidence on the record supports the following conclusions:

1. That the portion of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards applicable to an original site certificate application; and

2. Because the certificate holder is proposing to add additional road and transmission line route options to the site boundary, the findings of fact and conclusion of law in the DPO focus on whether the portions of the facility within the area added to the site boundary by RFA1 comply with all laws and Council standards applicable to an original site certificate application. **The Scope of Council Review for RFA1 does not include findings of fact or conclusions of law that apply to the approved facility as described in the ASC and Final Order on ASC, 1 does not scope of Council's Review for RFA1 does not include findings of fact or conclusions of law that apply to the approved facility as described in the ASC and Final Order on ASC, including transmission line routes and related or supporting facilities.** " (Exhibit 2, Pages 3 and 4)

Exhibits supporting this Contested Case

Exhibit 1, ODOE Home describes the B2H Amendment 1 as follows" RFA1 seeks Council approval to add area to the site boundary to allow siting of previously approved facility components in new locations

and **to** amend site certificate language to support implementation and interpretation.”

Exhibit 2, Memo from Kellen Tardaewether to Energy Facility Siting Council, July 5, 2023 giving staff recommendations and scope of review for Amendment 1.

Exhibit 3 – Boardman to Hemingway Transmission Line – Draft Proposed Order on Request for Amendment 1 June 14, 2023

Exhibit 5 – Public Notice Boardman to Hemingway Transmission Line – Proposed Order on Site Certificate Amendment 1 and Opportunity to Request a Contested Case.

Exhibit 6 –Public Notice Boardman to Hemingway Transmission Line, Request for Comments on the Complete Request for Amendment 1 and Draft Proposed Order.

Exhibit 7—email to Council which to my knowledge, still has not been forwarded to them.

This request for a Contested Case on the above issue is respectfully submitted on September 8, 2023.

Irene Gilbert

2310 Adams Ave.

La Grande,Ore 97850

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ESTERSON Sarah * ODOE

From: Sarah.ESTERSON@energy.oregon.gov
Subject: Contested Case Requests Submitted on behalf of Stop B2H, public interest and myself as an individual
Attachments: Contested Case Request Document Information Required for all Requests.pdf; Attachment I CURRENT Bond Contested Case Request w_Matt edits.pdf; Contested Case 3 Failure to provide opportunity to comment on site certificate changes from original order two.pdf; Exhibits 2 3 4 5 7 for notice.pdf; Bond Documentation Merged.pdf

From: Irene Gilbert <ott.irene@frontier.com>
Sent: Friday, September 8, 2023 2:49 PM
To: TARDAEWETHER Kellen * ODOE <kellen.tardaewether@energy.oregon.gov>; CORNETT Todd * ODOE <todd.cornett@oregon.gov>
Cc: Fuji Kreider <fkreider@campblackdog.org>; Jim Kreider <jkreider@campblackdog.org>; Lois Barry <loisbarry31@gmail.com>; Charlie Gillis <charlie@gillis-law.com>; Matt Cooper <mcooperpiano@gmail.com>
Subject: Contested Case Requests Submitted on behalf of Stop B2H, public interest and myself as an individual

Please accept the attached documents in support of two contested cases: I did not merge all the Exhibits since they are not required to submit these requests. They will be provided during the formal Contested Case Process.

1. The first attached document contains the general information required for all three contested cases included here.
2. The second document is the request for contested case on the Bond amount. being submitted on behalf of Stop B2H, the public interest and me as an individual.
3. The third document is the request for Contested Case on the issue of failure to inform the public. (Stop B2H did not comment on this issue, so it is only provided under the public interest and Irene Gilbert)
4. The fourth document is exhibits supporting the lack of informing public of opportunity to participate. The file lacks the Original notice of the public Comment on the Draft Proposed Order and site Certificate.. The EFSC web page no longer will allow me to access the Notice of opportunity to comment on the Draft Proposed Order and Site Certificate. This document will be made available during the contested case process. (Stop B2H did not comment on this issue, so it is only provided under the public interest and Irene Gilbert)
5. The fifth document contains Exhibits related to the Bond Contested Case.

I will submit an additional Contested Case Request in another email to keep the issues and documentation separate.

To: Energy Facility Siting Counsel Members Friday, July 21, 2023

From: Irene Gilbert, as an Individual citizen

Subject: Council Process Concerns. These issues are being presented by me as an individual and have not been approved by any groups which I am affiliated with.

I am requesting that the Energy Facility Siting Counsel make the following requests of the Oregon Department of Energy

1. That scheduling provides adequate time for counsel members to receive, read, and research public comments they receive.
2. That the Oregon Department of Energy provide statements in public notices that communicate that changes to existing site certificate conditions will be reviewed in regards to their impacts on the entire development.
3. That notice include a description of Amendments that communicates that the changes are significant when they are.
4. Rather than Counsel making comments that are based upon assumptions regarding a commenter or their comment which may impact counsel decisions, I am requesting that they be posed as a question to the individual.

NARRATIVE REGARDING THE ABOVE REQUESTS

TIMELINES FOR COUNCIL REVIEW OF PUBLIC COMMENTS

As frustrating as it is, I continue to bring issues before the Council in the hopes that at some point Counsel will give weight to the public comments rather than relying upon interpretations and recommendations of the Oregon Department of Energy and the developer. Counsel members should at least give the public the courtesy of reading their comments and require scheduling that allows them to read the objections and compare them with the rules and statutes that the counsel is to apply. When public comment hearings are held the day prior to the Counsel being presented with the Oregon Department of Energy Recommendations, the potential that public comments will be given due consideration is slim at best. I applaud Counselor Devlin and Counselor Beier for stating the obvious fact that they would not have enough time to read and consider the written comments submitted by the public regarding Amendment 1 of the B2H Site Certificate prior to the counsel meeting the following day which started at 8:30 a. m. The counsel has the authority to require that ODOE schedule

meetings to review Draft Site Certificates and public comments in a timeframe that allows members to make up their own minds as to their legitimacy.

A process where council members must rely upon the Oregon Department of Energy staff to interpret, restate and recommend that public comments should not be adopted is both discouraging and disrespectful to members of the public who often struggle for many hours in an effort to communicate to counsel areas where a draft site certificate fails to comply with Counsel rules. Many of these citizens are not familiar with the EFSC contested case process, may or may not have had any experience with government bureaucracy and often are stressed and frightened by the impacts that the proposed development will have on them and things they value. Some appear trying to protect resources that families have spent generations protecting that will be damaged or destroyed. The majority of the parties simply want developers to compensate citizens and the public at large for the damages to such things as wildlife, historic properties, protected areas, local economies, or because they are being placed at risk of wildfire, noxious weed infestations, noise exceedances, etc. Citizens and local agencies will bear the burden for the impacts of energy developments. That burden should not be increased because the developer is allowed to avoid providing compensation or resources to compensate for damages.

I understand why developers want site certificates that require minimal mitigation for impacts to private property owners, ratepayers and public institutions. They typically work for their stockholders or large multinational companies and must make money to satisfy them.

I understand ODOE's motivation for supporting the developers as they did by making recommendations that counsel deny every contested case on the Original Site Certificate for one recent decision. ORS 469.421 requires the Oregon Department of Energy Siting Division to charge developers and facility owners the entire cost of their budget. They are reliant on the developers of Site Certificates they approve to pay their salaries and maintain the Siting Division. If they were not approving site certificates and having energy developments built, they would lose their jobs.

What I do not understand is why the Council members would accept the recommendations and restatement of arguments provided by ODOE and the developers without actually doing their own evaluation of public comments and

references provided or providing opportunity for the public to correct errors, misstatements of issues or when the department fails to present arguments made by the public. I encourage you to have a discussion regarding above request Number 1.

PROCEDURAL QUESTION AND RECOMMENDATION REGARDING WHETHER THE PUBLIC NOTICES ACCURATELY DESCRIBES THE ISSUES AND PROCESSES THAT WILL OCCUR

I submit the following:

On Page 1 the notice states reviewed at the July 18, 2023 counsel meeting states that the amendment includes re-location of transmission line route segments, changes in some new and substantially modified roads and “amendments of site certificate language to support implementation and interpretation”.

I question that a statement such as this communicates to the public the fact that changes in site certificate conditions include changing the requirements or allows exceptions to previously approved requirements.

On page 2, description of amendment request it says that the request adds area to move facility components and “also seeks approval to modify condition language for several conditions (See RFA1 Attachment 6-1) I question that a statement such as this communicates that there are site certificate changes that are entirely different as a result of the modification of the language.

On page 4 of the Public Notice the first paragraph states, **“Review for RFA1, Council must determine whether the preponderance of evidence on the record supports that the PORTIONS OF THE FACILITY WITHIN THE AREA ADDED TO THE SITE BOUNDARY BY THE AMENDMENT COMPLIES WITH ALL LAWS AND COUNCIL STANDARDS APPLICABLE TO AN ORIGINAL SITE CERTIFICATE application, and the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.”**

The Oregon Department of Energy told the council that their rules do not require specificity in their notices and that their public notice does not state that the public cannot respond to anything they like. When a notice states that what the counsel will be evaluating is whether the portions of the facility added to the site boundary comply with counsel rules, it is reasonable to believe that based upon

the decision process for allowing a contested case this is the only area where any changes could form the basis of a contested case. Commenting on other impacts would be a waste of time.

To Address this issue, please discuss and consider implementing recommendations 2 and 3 above.

REGARDING A COMMENT REGARDING WHETHER OR NOT I WAS AWARE OF A COUNCIL RULE WHICH OCCURRED AT THE JULY 18, 2023 PUBLIC HEARING

At that meeting a Counselor stated that she did not believe me when I stated the reason for requesting time to submit written comment on a topic in writing was because I was unaware of the opportunity to comment regarding impacts to the entire site when previously approved site certificate conditions were changed during an amendment. When counsel makes assumptions absent documentation that are likely to impact the results of a decision and an individual is present, I recommend that Counsel provide opportunity for the individual to respond. My father is responsible for my ethics and honesty is a core value I have. I do not knowingly lie. If I misstate it is because I lack understanding or knowledge. When I said that I was unaware until 2 days prior to the council meeting that comments regarding changes in previously approved site certificate conditions allowed comment on how that change impacts the entire development, that was exactly what I meant. I do not recall having an Amendment request that included both the addition of area as well as substantial changes in previous site certificate conditions. Typically they address increased area, new processes, changes in ownership, dividing the site into two or more developments, or changes to timeframes as the only issue.

In spite of following counsel for a dozen years, my experience with contested cases regarding amended site certificates is very limited. ODOE has a long history of denying contested cases on Amendment Requests and I would be surprised if they have allowed more than a half a dozen such requests in the past dozen years. I encourage council to request from ODOE a list of any Site Certificate Amendments where I was allowed to comment or understood that I have a right to comment to support a future contested case request based upon changes to previously approved site certificate conditions that would impact the entire site.

The reason I went back to the actual language of the rule 2 days prior to the public hearings was because of the significance of the changes in previous Site Certificate Conditions. Upon reading the rule, I realized that the changed site certificate conditions should be evaluated based upon impacts to the entire facility in spite of the statement to the contrary in the Public Notice.

The notice failed to communicate either the significance of the changed site certificate conditions or the fact that the council is required to evaluate the changed conditions in relation to their impacts on the entire facility. I do not believe at this point it would be productive for me to contest this issue. I am, however, requesting that counsel include in their next meeting a discussion of this memo and that individual council members consider implementing Suggestion 4 when they question statements of a party or a developer.

I also encourage counsel to fact check my comments as well as those of developers which are made during EFSC meetings.

For example, please research whether or not I would be correct were I to state that a bond is not required because developers maintain insurance or other methods that would address the need to compensate the public for costs of sight restoration in the event that the developer fails to do so that would not rely upon ratepayers and the public to pay for site restoration.

Respectfully submitted,
Irene Gilbert
2310 Adams Ave.
La Grande, Oregon 97850

Idaho Power’s Responses to Comments on the Draft Proposed Order for Request for Amendment #1
July 19, 2023

Idaho Power provides the following responses to oral comments regarding the Draft Proposed Order (“DPO”) for Request for Amendment #1 (“RFA1”) for the Boardman to Hemingway transmission line project (“B2H” or the “Project”) at the July 17 and July 18, 2023 DPO Public Comments hearings, as well as written comments received by ODOE before the close of the DPO comment hearing on July 18, 2023. Idaho Power also responded to certain oral comments at the July 18, 2023 Public Comment Meeting, and provides those responses again in writing for the Council’s convenience.

Commenter	DPO Comment	Idaho Power Company’s Response
<i>Oregon Forest Practices Act</i>		
STOP B2H	<p>The rule language was adopted on October 26, 2022 to implement Senate Bills 1501, 1502, House Bill 4055 and the Private Forest Accord Report dated February 2, 2022. The changes were promulgated in rule on October 26, 2022 with staggered effective dates, the last having an effective date of January 1, 2024 (See Attachment 2.)</p> <p>Many requirements in the rules apply to this Amendment and also apply to all other site certificates involving the cutting of trees to develop the site. It provides specific requirements for all forest activities involving the removal of timber. Definitions and Requirements are clearly laid out in the statutes and rules and include:</p> <p>OAR 629-600-0100:“forestland” as land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.</p>	<p>These comments are outside the scope of the Council’s review because the Council has chosen not to assert jurisdiction over the application of the Forest Practices Act for B2H. Rather, Idaho Power will work directly with the Oregon Department of Forestry (“ODF”) regarding compliance with the Forest Practices Act, including through the Company’s Plan for an Alternate Practice, which will be filed with and reviewed directly by ODF.</p> <p>For each project seeking a site certificate, the Council issues a project order establishing the statutes, administrative rules, council standards, local ordinances, application requirements and study requirements for the site certificate application.¹ To issue a site certificate, the Council must determine that a proposed facility complies with all Oregon statutes and administrative rules identified in the project order.²</p> <p>For B2H, ODOE acknowledged in the Project Order that certain tree-removal activities associated with the</p>

¹ ORS 469.330(3).

² ORS 469.503(3).

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		<p>Project “may be subject to the Oregon Forest Practices Act.”³ However, the Project Order recommended that Idaho Power “contact ODF to determine the requirements for obtaining . . . any other required permits or approvals from ODF.”⁴ In the Final Order, the Council further clarified that it did “not assert jurisdiction of the [Forest Practices Act]” and instead directed Idaho Power to “work directly with ODF on [Forest Practices Act] requirements.”⁵</p> <p>Although the Council has chosen not to assert jurisdiction over the application of the Forest Practices Act in this case, Land Use Condition 4 requires that, before beginning construction of “any roads constructed in forest lands in Umatilla County, [Idaho Power] will ensure road construction is consistent with the Oregon Forest Practices Act.”⁶ Consistent with Land Use Condition 4, Idaho Power is coordinating with ODF to ensure that all Project-related roads in forestlands, including those in Umatilla County, will be constructed or upgraded consistent with the Forest Practices Act. This coordination includes preparing a Plan for Alternate Practice, which will apply to all private forestland requiring permanent clearance for the</p>

³ Second Amended Project Order at 9 (July 26, 2018) (available at <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2018-07-26-B2H-Second-Amended-Project-Order.pdf>) (last visited July 18, 2023).

⁴ *Id.*

⁵ Final Order at 649-50 (Sept. 27, 2022) (available at <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2022-09-27-Final-Order-on-ASC.pdf>) (last visited July 18, 2023).

⁶ Final Order at 186.

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		transmission line route and for Project roads. ⁷ Idaho Power will finalize this plan through coordination with ODF prior to construction in forestlands. ⁸
STOP B2H	Any forestland capable of annual wood production of at least 20 cubic feet per acre is subject to the reforestation rules.	<p>The Forest Practices Reforestation Rules (OAR Chapter 629, Division 610) generally require a landowner to replant (or ensuring natural regeneration of) the forest after a timber harvest and maintain the seedlings to the point that they are "free to grow" at a stocking level that meets the Forest Practices Act’s minimum stocking standards).⁹ If forestlands will be converted to a use not compatible with maintaining forest tree cover, the landowner must obtain written approval of a Plan for an Alternate Practice from ODF providing an exemption from the Forest Practices Act’s reforestation requirements.¹⁰</p> <p>Idaho Power is preparing a Plan for Alternate Practice which will apply to all private forestland requiring permanent clearance for the transmission line route and for Project roads.¹¹ Idaho Power will finalize this plan through coordination with ODF prior to construction in forestlands.¹²</p> <p>The Company is currently finalizing its Plan for Alternate Practice with ODF. As part of this review</p>

⁷ Final Order, Attachment BB-1, Draft Plan for Alternate Practice at 1 (Sept. 27, 2022) (available at <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2022-09-27-Attachment-BB-1-Plan-Alternative-Practice.pdf>) (last visited July 18, 2023).

⁸ *Id.*

⁹ See OAR 629-610-0000.

¹⁰ See OAR 629-610-0090(1).

¹¹ Final Order, Attachment BB-1, Draft Plan for Alternate Practice at 1.

¹² *Id.*

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		process, Idaho Power has updated its draft plan to include all additional forestlands that may be impacted by the proposed route revisions and additional access roads at issue in RFA1 and RFA2. Idaho Power will address compliance with the applicable provisions of the Forest Practices Act through direct coordination with ODF and the finalized plan prior to beginning construction in forestlands.
STOP B2H	<p>These new rules (promulgated before this RFA was submitted) also requires a written plan for:</p> <p>(a) forest operations occurring within 100 feet of a stream determined by the State Forester to be used by fish or for domestic use or a significant wetland.</p> <p>(b) Areas at risk from road generated materials entering the waters, roads constructed in riparian areas, constructing or reconstructing any water crossing or roads constructed in critical locations including those within 50 feet of stream channels or lakes, or within significant wetlands.</p> <p>(c) All road construction in critical locations.</p> <p>(d) Conflicts with sensitive wildlife species also require written plan.</p>	<p>ORS 527.670(3) requires submittal to ODF of a written plan before beginning an operation that occurs within 100 feet of a stream determined by the State Forester to be used by fish or for domestic use and 100 feet of a significant wetland. STOP B2H’s assertion that this is a new requirement adopted in 2022 is incorrect. ORS 527.670 was last revised in 2011.¹³</p> <p>As discussed above, the Council has elected not to assert jurisdiction over the application of the Forest Practices Act in this case, and for that reason Idaho Power is working with ODF to ensure compliance with all applicable provisions of the Forest Practices Act.</p>
STOP B2H	Intent to obtain, or the issuance of approval of an Alternate Practice does not exempt the developer from complying with the FPA through the removal of the existing timber. The Alternate Practice only	To the extent STOP B2H asserts that additional Forest Practices Act requirements beyond the scope of Idaho Power’s Plan for an Alternate Practice will apply to the Project, as discussed above Idaho Power will work

¹³ Or. Laws 2011 c.54 §1.

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	addresses the ability of the developer to avoid the reforestation requirements.	directly with ODF to determine compliance with these requirements.
STOP B2H	<p>Roads and associated Structures, access and construction areas had not been completed and as such was not available to analyze in the Final Environmental Impact Statement (“EIS”).</p> <p>Detailed analysis of impacts to waters of the US was not conducted during the final EIS due to lack of availability of micro-siting information for tower pads, laydown Yards, tensioning sites and other sub facilities.</p>	The EIS is a federal review conducted pursuant to the National Environmental Policy Act. The EIS is outside the Council’s jurisdiction and concerns regarding the analysis in the EIS are outside the scope of RFA1.
STOP B2H	The final Right of Way Clearing Assessment referenced in GEN-LU-13 must include requirements of the Forest Practices Act and be approved by the Oregon Department of Forestry to establish compliance with the FPA.	This comment is outside the scope of RFA1. The Council included site certificate condition GEN-LU-13 (also labeled Land Use Condition 16) in its Final Order on Idaho Power’s Application for Site Certificate (“ASC”), and that condition is not revised in either RFA1 or in ODOE’s DPO recommending approval of RFA1. Moreover, as discussed above, the Council elected not to assert jurisdiction over application of the Forest Practices Act for B2H, and Idaho Power will instead coordinate with ODF to ensure compliance with applicable provisions of the Forest Practices Act.
STOP B2H	<p>As we are sure you noticed, Conditions in the Site Certificate conflict with and effectively waive requirements of the Forest Practices Act in effect as of July 1, 2023 and those with implementation date of January 1, 2024 for any roads constructed after January 1, 2024.</p> <p>* * * * *</p>	<p>STOP B2H raises concerns regarding the site certificate that the Council has already issued for the Project. These comments are outside the scope of RFA1.</p> <p>Additionally, contrary to STOP B2H’s comment, the Council did not waive the Forest Practices Act. Rather, as discussed above, the Council elected not to assert jurisdiction over application of the Forest Practices Act in this case and instead ODF will determine compliance</p>

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	<p>What is clear is that there are roads and developments such as multiple use areas that appear to be right up against streams and wetlands. And the current site certificate fails to require setbacks consistent with the FPA. Following are some examples: Union County condition GEN-LU-06 (a) and (b) allowing roads within 25 feet or one-half the steam width. Baker County and Malheur County contain no setback distances being required from streams and wetlands.</p>	<p>with the applicable provisions of the Forest Practices Act.</p>
<p>Irene Gilbert</p>	<p>The Forest Practices Act was adopted October, 26, 2022, and Oregon Department of Forestry (“ODF”) has adopted rules implementing that statute, most of which have gone into effect.</p> <p>In the Forest Practices Act, “forestland” is defined as “land which is used for growing and harvesting of trees.” And it says “regardless of how the land is zoned or taxed, or how any state or local statutes, ordinance rules, or regulations are applied.” So, it basically trumps as far as other agencies, and their decisions about dealing with forestland.</p>	<p>As discussed above in response to STOP B2H’s comment, this comment is outside the scope of the Council’s review because the Council has chosen not to assert jurisdiction over the application of the Forest Practices Act for B2H.</p>
<p>Irene Gilbert</p>	<p>The Forest Practices Act also defines forestland that says any forest land capable of annual group with production of at least 20 cubic feet per acre is subject to the reforestation rules. The Project is subject to reforestation requirements.</p>	<p>As discussed above in response to STOP B2H’s comment, Idaho Power is seeking approval of a Plan for an Alternate Practice from ODF providing an exemption from the Forest Practices Act’s reforestation requirements.¹⁴</p>

¹⁴ See OAR 629-610-0090(1).

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Irene Gilbert	<p>The Forest Practices Act requires a written plan for any forest operation occurring within 100 feet of a stream determined by the state forester to be used by fish, or for domestic use, or a significant wetland.</p> <p>It also says they have to have a written plan for areas at risk from road generated materials, entering the waters roads constructed in riparian areas, constructing, or reconstructing any water crossing or roads constructed in critical locations, including those within 50 feet of stream channels, or lakes, or within significant wetlands. So all roads in critical locations, require a written plan.</p>	<p>As discussed above in response to STOP B2H’s comment, the Council has elected not to assert jurisdiction over the application of the Forest Practices Act in this case, and for that reason Idaho Power is working with ODF to ensure compliance with all applicable provisions of the Forest Practices Act.</p>
Irene Gilbert	<p>The protected species that are specifically addressed in the Forest Practices Act include the Northern Spotted owl, bald eagle, osprey, great blue heron, golden eagle, marbled murrelet, and band-tailed pigeon.</p>	<p>To the extent Ms. Gilbert suggests this protection for certain avian species is a new requirement adopted in 2022, that assertion is incorrect. While it is true that the Oregon Legislature recently revised the Forest Practices Act and ODF adopted new rules to implement these revisions, it should be noted that the specific requirements that Ms. Gilbert cites in her comments predate these revisions and were already in effect at the time EFSC issued the site certificate for the Project.</p> <p>For example, Ms. Gilbert refers to regulations limiting operations within certain distances of nesting sites for northern spotted owl, bald eagles, osprey, and great blue herons, but these regulations were all in effect prior to the recent revisions to the Forest Practices Act.¹⁵</p>

¹⁵ OAR 629-665-0210 (effective on Sept.1, 2017); OAR 629-665-0110 (effective on Jan. 1, 2006); OAR 629-665-0120 (effective on Sept.1, 2017); OAR 629-665-0130 (initially effective on Sept. 1, 2017 with a minor revision correcting grammatical mistakes in a manner that did not alter the scope, application or meaning of the rule effective on July 1, 2023).

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Irene Gilbert	In the site certificate there’s a lot of discussion about the Oregon Department of Fish and Wildlife (“ODFW”) approval of things like stream crossings. ODFW makes some subjective decisions, but the Forest Practices Act is not open to interpretation by ODFW. When you're talking about stream crossings and you're talking about dealing with these wildlife species, the site certificate clearly has some conflicts that amount to waiving the Forest Practices Act.	As discussed above in response to STOP B2H’s comment, challenges to conclusions in the site certificate that the Council has already issued for the Project are outside the scope of RFA1.
<i>Oregon Trail</i>		
Oregon-California Trails Association (“OCTA”)	Map 1. The new road lies just outside the border with the Boardman Range. Just over the fence line (west) on the range are extensive Class 1 trail ruts. The location of the proposed road is to the east of the boundary. This area has long been in agricultural use with no obvious trail visible. However, while trail may not be obvious to an observer, there may be artifacts present that would reveal the trail. The trail location can be approximately very closely by extending the traces within the range eastward. Have archaeological studies of the area of the new road been conducted, and if so what in a general did they reveal?	<p>Idaho Power assumes OCTA is referring to the area depicted in Map 1 of Figure 4-2 of the Company’s RFA1 Application (RFA 1 Proposed Site Boundary Additions (Access Roads)). Map 1 of Figure 7-18 (RFA1 Cultural Survey Status (Access Roads)) depicts the status of the cultural resources pedestrian surveys of the Direct Analysis Area for the same area. According to Map 1 of Figure 7-18, the cultural resources pedestrian surveys of the Direct Analysis Area for the area in question are complete. There were no new segments of the Oregon Trail that were identified in the agricultural area in Map 1 of Figure 4-2.</p> <p>A report for the surveys within the Direct Analysis Area completed through 2021, i.e., the Initial Class III Report, is provided as Confidential Attachment 7-11 to the RFA1 Application. This report has been reviewed by consulting parties for the Project’s Section 106 process. An updated Oregon Visual Assessment of Historic Properties Intensive Level Survey (“VAHP ILS”) for the Visual Assessment Analysis Area is also provided as Confidential Attachment 7-12 to the RFA1 Application.</p>

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		<p>This report is a draft and is currently being revised under the Section 106 process.</p> <p>During Phase 2—which will be conducted after the amended site certificate on RFA1 has been issued, but before construction—Idaho Power will conduct any additional surveys required to confirm archaeological site boundaries and isolated finds, to determine eligibility on the National Register of Historic Places (“NRHP”), to complete an inventory of 100 percent of the proposed RFA1 site boundary additions, as well as any necessary subsurface inventory or evaluation efforts.</p> <p>Per the Programmatic Agreement, where cultural resources of archaeological significance are identified in the analysis area for a particular transmission line construction segment or associated facilities, all surveys and mitigation plans for such resources must be completed prior to construction.</p>
Oregon-California Trails Association (“OCTA”)	Map 12 and 13. Our simulations do not include the effect of forest cover. We suspect that the new roads in this area will not be visible from the Oregon National Historic Trail (“ONHT”) which is on the other side of I-84 on a ridgeline. Has this been verified?	<p>Idaho Power assumes OCTA is referring to Maps 12 and 13 of Figure 4-2 of the Company’s RFA1 Application (RFA 1 Proposed Site Boundary Additions (Access Roads)).</p> <p>The impacts associated with changes in visibility as a result of RFA1 were found to be similar to what was described in the Company’s ASC. AECOM prepared revised viewshed maps that identified areas that would have new views based upon the new alignments and roads. The maps contained in the 2022 draft VAHP ILS (Confidential Attachment 7-12) were then analyzed.</p>

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		<p>This analysis did not identify resources that would be newly affected by the proposed route changes other than those archaeological sites with aboveground components identified by Tetra Tech in the Direct Analysis Area and contained in the Initial Class III Report (Confidential Attachment 7-11). A map depicting the identified resources and viewshed impacts for the site boundary is provided as Confidential Attachment 7-13 of the RFA1 Application. Outside of site boundary, no additional resources were identified for field analysis within the Visual Assessment Analysis Area.</p> <p>The trails identified in Maps 12 and 13 of Figure 4-2 have not been previously identified or confirmed to be eligible on the NRHP. Due to the existing forest cover and positioning of the Project in the areas in question, the Project is not likely to be visible from intact, identified NRHP-eligible portions of the Oregon Trail.</p> <p>Access road UN-002b, as depicted in Map 12 of Figure 4-2, would not be visible from intact, identified NRHP-eligible Oregon Trail segments. There would be no new indirect (i.e., visual) impacts because UN-002b is a new access road using the old location of an abandoned road with surrounding vegetation, intervening topography, and a more prominent built environment.</p> <p>Access road UN-625, as depicted in Map 13 of Figure 4-2, would also not be visible from intact, identified NRHP-eligible Oregon Trail segments. There</p>

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		would be no new indirect (i.e., visual) impacts because UN-625 is shielded by intervening vegetation and topography.
Oregon-California Trails Association (“OCTA”)	Map 16. The location of the ONHT in the area of Clover Creek is not well documented. The construction of I-84 probably obliterated much of the original route. Through the Bureau of Land Management we have requested further studies and documentation of this area to provide better information on the trail’s location. Both the approved routing of the B2H transmission line and the new road will add to the degradation of the setting. The National Park Service’s routing of the trail through this area cannot be taken as definitive.	<p>Idaho Power assumes OCTA is referring to Map 16 of Figure 4-2 of the Company’s RFA1 Application (RFA 1 Proposed Site Boundary Additions (Access Roads)). To the best of Idaho Power’s knowledge at this time, there are no previously recorded and/or intact segments of the Oregon Trail that have been identified through archaeological investigations in the vicinity of the Clover Creek area.</p> <p>Note that per Map 16 of Figure 7-18 (RFA1 Cultural Survey Status (Access Roads)), the Company’s cultural resources pedestrian surveys for the Direct Analysis Area in the Clover Creek area have not been completed. However, since the filing of the RFA1 Application, Idaho Power has completed the cultural resources pedestrian surveys for the Direct Analysis Area in Map 16 and is in the process of updating the information in the Company’s preconstruction survey report. No new cultural resources, including Oregon Trail segments, were identified in the vicinity of the Clover Creek area.</p>
<i>Incorporating Comments by Reference</i>		
STOP B2H	For the record and specificity, we would like to incorporate the comments of Jim Kreider, Stop B2H Coalition, Wendy King, and Sam Myers in the Public Utility Commission of Oregon (“OPUC”) docket UM2209.	STOP B2H’s reference to “specificity” appears to suggest that STOP B2H seeks to preserve for a potential contested case in this matter any issues raised in other parties’ testimonies in a separate proceeding before an entirely different agency. ORS 469.370(3) requires that “[a]ny issue that may be the basis for a contested case . . . be raised with sufficient specificity to afford the

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		council, the department and the applicant an adequate opportunity to respond to each issue.” Merely referring to comments from multiple parties in a separate proceeding before a different agency does not inform the Council, ODOE, or Idaho Power of any alleged error in the DPO for RFA1. For that reason, STOP B2H’s attempt to incorporate other parties’ comments by reference does not raise any issue with sufficient specificity to provide the Council, ODOE, or Idaho Power the opportunity to respond.
Irene Gilbert	<p>I don't know who all has submitted comments, but I would like to incorporate into my presentation any and all comments that come before council. . . . If we are again told we can only be a limited party, I want to establish that that we may very well be interested in making comments on other comments.</p> <p align="center">* * * * *</p> <p>The Noxious Weed Plan doesn't provide for monitoring for the life of the development and so I'd like to incorporate because I know that I don't have my act together on this and I didn't even send in anything in writing or providing anything in writing. incorporate the comments that were made by STOP B2H in the prior decision process and also Susan gear who made several submissions about it.</p>	For the same reasons discussed above in response to STOP B2H’s comment, Ms. Gilbert’s broad request to incorporate all comments raised by other individuals and to incorporate the entire testimony filed by STOP B2H and Susan Geer in the previous contested case on the ASC fails to raise any issue with sufficient specificity for the Council, ODOE, or Idaho Power to respond.
<i>Idaho Power’s Wildfire Mitigation Plan</i>		
Irene Gilbert	In the OPUC hearings, Idaho Power said that they don’t develop plans during the construction period.	Ms. Gilbert’s comment misstates the record. While the Wildfire Mitigation Plan applies to the Project during operation, Idaho Power is also required by Public

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	Their plans all focus on after the development is operational.	Services Condition 6 to the Site Certificate to adhere to the Fire Prevention and Suppression Plan, which identifies measures for preventing fires, and responding to fires that might occur during construction. ¹⁶ In its Final Order on Idaho Power’s ASC, the Council adopted the Hearing Officer’s conclusion that Idaho Power’s Fire Prevention and Suppression Plan is adequate. ¹⁷
Irene Gilbert	Idaho Power does not consider injury or death to citizens in evaluating the fire management plan.	<p>Ms. Gilbert’s comment is not correct. As explained in Idaho Power’s Wildfire Mitigation Plan, the Company assesses wildfire risk by considering fire probability multiplied by the consequence of a fire.¹⁸ Consequence is defined as “Number of structures (i.e., homes, businesses, other man-made structures) that may be impacted by a wildfire.”¹⁹ These impacts to structures are a proxy for potential impacts to the individuals who would be in or use those structures.</p> <p>Dr. Christopher Lautenberger, Idaho Power’s expert witness who helped prepare the Company’s Wildfire Mitigation Plan, clarified this at the hearing for Idaho Power’s Petition for a CPCN, where he stated: “[C]onsequence is the negative impacts to different assets at risk. Assets at risk that are typically prioritized when looking at utility caused fires are loss of life and loss of structures, and those were the two assets at risk that were considered consequences in the risk modeling</p>

¹⁶ Final Order, Attachment U-3, Draft Fire Prevention and Suppression Plan, Section 2 (Sept. 27, 2022) (available at <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2022-09-27-Attachment-U-3%20Draft-Fire-Prevention-and-Suppression-Plan.pdf>) (last visited July 18, 2023); Final Order at 612.

¹⁷ *Id.* at 34.

¹⁸ DPO on RFA1, Attachment 7-16, Wildfire Mitigation Plan at 10.

¹⁹ *Id.*

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STOP B2H	The OPUC inserted conditions in the 2023 Wildfire Mitigation Plan after the issues raised by STOP were not corrected from the 2022 Wildfire Plan. The problems in the 2022 and 2023 Wildfire Prevention and Risk Management Plans will affect areas in Union County that are being modified in RFA 1. It will also impact roads already approved.	<p>that was conducted by Idaho Power to inform its Wildfire Mitigation Plan.”²⁰</p> <p>STOP B2H alleges “problems” in Idaho Power’s 2022 and 2023 Wildfire Mitigation Plans. However, the proper venue to raise these concerns was in OPUC Docket UM 2209—and given STOP B2H’s reference to its prior comments in Docket UM 2209, it appears that STOP B2H fully participated in that proceeding. The process in Docket UM 2209 was robust, and as STOP B2H acknowledges in its comments, the OPUC approved Idaho Power’s 2023 Wildfire Mitigation Plan in that docket.²¹</p> <p>It is also important to note that the utilities’ annual Wildfire Mitigation Plans under the OPUC’s jurisdiction are intended to be living documents, and changes to them are intended to be iterative. While the OPUC recommended additional actions that the Company should take when preparing its 2024 Wildfire Mitigation Plan, the OPUC and other stakeholders, including STOP B2H, will continue to have the opportunity to participate in these annual WMP updates and provide comments and suggestions for updated wildfire mitigation strategies in Docket UM 2209. To keep the Council informed of the development of these annual plans, ODOE’s Recommended Wildfire Prevention and Risk Mitigation Condition 2 will require</p>

²⁰ *In re Idaho Power Co. Petition for Certificate of Public Convenience and Necessity*, OPUC Docket PCN 5, Transcript for the 4/19/23 and 4/20/23 Evidentiary Hearing at 204, lines 15-21 (a copy of this transcript excerpt is provided with these responses as Attachment A).

²¹ *In re Idaho Power Co. 2023 Wildfire Protection Plan*, OPUC Docket UM 2209, Order No. 23-222 (June 26, 2023).

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STOP B2H	STOP reads OPUC Order 23-222 to be conditional due to lack of clarity and the additional work the applicant has been told to complete. OPUC staff has 37 recommendations to work through with Idaho Power before Idaho Power’s Wildfire Plan for Oregon is considered complete.	Idaho Power to submit a copy of each annual updated plan to the Council. ²² STOP B2H’s reading of OPUC Order No. 23-222 is incorrect. The OPUC approved Idaho Power’s 2023 Wildfire Mitigation Plan and recommended additional information that Idaho Power should include in the 2024 Wildfire Mitigation Plan, but also noted that there may be implementation issues, and in some cases, recommendations may need to be modified, and directed Idaho Power to consult with Staff regarding implementation of recommendations and include a summary of that consultation in its 2024 Wildfire Mitigation Plan. ²³ Idaho Power will take this direction from the OPUC into account when preparing its 2024 Wildfire Mitigation Plan.
STOP B2H	The Union County Community Wildfire Protection Plan identifies the Morgan Lake/Glass Hill, Perry/Hilgard, and Kamela areas as wildland-urban interface areas or WUI’s. They are in the B2H’s site boundary. However, IPC has refused to show their fire risk calculations that they were asked to show in 2022 to determine how 3 other agencies’ analyses identifies high risk fire areas in the route of the B2H but IPC does not get the same results. Therefore, we do not know why 3 other entities, in the Wildfire mapping community, see these as high-risk wildfire zones and IPC does not. Which brings into question all of IPC’s wildfire work and the Site Certificate	As discussed above, STOP B2H raised this concern in comments in OPUC Docket UM 2209 and OPUC recommended that Idaho Power “should consider the larger communications challenge of ensuring that residents in its service territory are aware of why it has designated certain areas as high fire risk zones and not others, and that they better understand why entities may use different methodologies, have different goals for designation, or have different inputs to the modeling. It should then work to close that information gap.” ²⁴ Idaho Power will continue working to address this OPUC recommendation in the Company’s 2024 plan, a copy of which will be submitted to the Council.

²² DPO on RFA1 at 210.

²³ OPUC Docket UM 2209, Order No. 23-222.

²⁴ OPUC Docket UM 2209, Order No. 23-222.

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	Conditions regarding wildfire risk and public services.	
<i>Bond for Decommissioning</i>		
STOP B2H	STOP B2H asserts that the bond amount and flexibility currently included in the site certificate fails to provide for the protection of landowners, residents, ratepayers, and public agencies, from the liability that will occur in the event Idaho Power abandons the transmission line or declares bankruptcy without restoring the site. STOP B2H specifically claims that the current ownership of the transmission line by Idaho Power and PacifiCorp increases the likelihood that the transmission line may be abandoned without restoration because the companies are allegedly at risk of filing for bankruptcy due to ongoing and potential future wildfire-related litigation that may result in millions and potentially billions of dollars owed.	As an initial matter, STOP B2H’s arguments were already litigated in the EFSC proceeding for the ASC, and EFSC found that the estimated cost of restoration was reasonable and Idaho Power provided sufficient information about its financial capability to demonstrate that it could obtain a bond or letter of security to cover required decommissioning and restoration costs. ²⁵ While STOP B2H focuses on ongoing wildfire litigation related to PacifiCorp and implies that PacifiCorp is at risk of filing for bankruptcy, Idaho Power—as the certificate holder—is responsible for the bond to cover the decommissioning and restoration costs associated with retirement of the facility per Retirement and Financial Assurance Conditions 2 through 5. Moreover, as stated above, EFSC has already concluded that Idaho Power is financially capable of obtaining a bond in the amount necessary to restore the facility site to a useful non-hazardous condition. Finally, if there are any changes that would require adjustment of the bond amount, Retirement and Financial Assurance Condition 5 requires Idaho Power to provide EFSC and ODOE a report every five years on: (a) the physical condition of the facility; (b) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (c) the facility’s

²⁵ Final Order at 330-39; *see also* Final Order, Attachment 6, Contested Case Order (CCO), as Amended and Adopted by Council at 255-60 (Sept. 27, 2022) (available at <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2022-09-27-Attachment-6-Contested-Case-Order-As-Amended-by-Council.pdf>) (last visited July 18, 2023) (Issue RFA-1).

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		performance in the context of the larger Northwest power grid; and (d) the certificate holder’s financial condition, including the certificate holder’s credit rating at that time. Importantly, under the condition, EFSC may request the report on an off-cycle year if requested. Moreover, the condition allows EFSC to consider whether or not the approach towards the financial assurance instrument remains appropriate and would account for unforeseen shifts in the power grid or the Idaho Power’s financial condition.
Irene Gilbert	Ms. Gilbert argues that the bond amount is not reasonable to address restoration costs. Furthermore, Ms. Gilbert argues that the site certificate conditions regarding the bond are not flexible enough as they do not address unforeseen conditions, such as a company declaring bankruptcy because of costs associated with wildfire litigation liability. Ms. Gilbert specifically references ongoing litigation specific to PacifiCorp regarding the Labor Day fires and a negotiated settlement specific to Idaho Power.	Please see Idaho Power’s response to STOP B2H’s comments above.
<i>Noxious Weeds</i>		
Irene Gilbert	One revised site certificate condition causing me concern is this condition saying that the vegetation management plan is finalized. I have not reviewed the Vegetation Management Plan. I know that during the previous activities related to this, this plan is required to comply with OAR 345-025-0016. The plan does not provide for assuring that noxious weeds do not impact wildlife habitat; it’s limited in the area that they are going to cover; does not	Ms. Gilbert’s comment conflates two distinct plans. Idaho Power’s Vegetation Management Plan describes the methods in which vegetation along the transmission line will be managed during operation of the Project. ²⁶ The measures IPC will undertake to control noxious and invasive-plant species and prevent the introduction of these species within the Project site boundary are discussed in the Noxious Weed Plan.

²⁶ DPO on RFA1, Attachment P1-4, Amended Vegetation Plan at 1.

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Commenter	DPO Comment	Idaho Power Company’s Response
	provide for monitoring for the life of the development.	More importantly, Ms. Gilbert raised these same challenges regarding the adequacy of Idaho Power’s Noxious Weed Plan in the contested case and these issues were fully litigated. In the Final Order, the Council adopted the Hearing Officer’s conclusion that the “Noxious Weed Plan is adequate to serve its intended purpose of establishing the measures the applicant will take to control noxious weed species and prevent the introduction of these species during construction and operation of the project.” ²⁷
<i>Towers Locations on Williams Property</i>		
John Williams	Mr. Williams objects to the placement of three transmission towers on his property for various reasons. Mr. Williams also raised concerns that he has not received all results of surveys conducted by Idaho Power on his property.	Mr. Williams’ comments regarding the impacts of the placement of transmission towers on his property are outside the scope of RFA1 as no modifications to tower locations are proposed in the Company’s RFA1 Application on Mr. Williams’ property. Idaho Power and its contractors have indeed completed surveys in the 2023 season. These reports are still being finalized and once the data is processed and compiled, a property-specific survey memorandum will be provided to Mr. Williams that will indicate what surveys were performed and the results of those surveys.
<i>Glass Hill State Natural Area (“SNA”)</i>		
Susan Geer	Ms. Geer asserts that the statements in the DPO for RFA1 concluding that there may be limited public access are mischaracterizations, and instead asserts that Glass Hill Preserve is not advertised, but it certainly is not closed to the public. The SNA is	Ms. Geer appears to suggest that the Glass Hill Preserve/SNA should be considered an important recreational opportunity for purposes of the Council’s Recreation Standard, and that the Council should have regarded the Glass Hill SNA as available for public

²⁷ Final Order at 21.

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Commenter	DPO Comment	Idaho Power Company’s Response
	<p>open to research and education as spelled out in the Natural Areas agreement, as well as non-motorized nature-oriented activities such as hiking, birding, botanizing, and mountain biking on existing trails. For many years the X-Terra mountain bike race was held on the property annually, and those trails are locally popular. Furthermore, the property owner hosts Native American ghost dance ceremonies as part of addiction recovery programs.</p>	<p>access. That fact, however, should not change the Council’s conclusions in the Final Order that it should not be analyzed as an important recreational opportunity.</p> <p>To determine whether a recreational opportunity is important the Council considers: Any special designation or management of the location; The degree of demand; Outstanding or unusual qualities; Availability or rareness; Irreplaceability or irretrievability of the opportunity.²⁸ ODOE weighed all five factors and determined that the Glass Hill Preserve/SNA is not an important recreational opportunity.²⁹ While the DPO concluded that public access was not likely allowed, that was not the sole basis for determining that the Glass Hill SNA was not an important recreation site. In particular, the DPO also considered that the Glass Hill SNA was designated for the protection of habitat and not for recreation, the remote location, the lack of available recreation facilities at the Glass Hill SNA, that access for hunting or fishing may require permission from the landowner, and that other sites offer similar opportunities. Even considering Ms. Geer’s comments regarding access, it bears noting that Ms. Geer affirms that the Glass Hill SNA is not advertised to the public and it is not clear that the activities described in Ms. Geer’s comments are broadly available to the public or a more limited subset of individuals.</p>

²⁸ OAR 345-022-0100(2).

²⁹ DPO on RFA1 at 185-87.

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Commenter	DPO Comment	Idaho Power Company’s Response
		<p>Moreover, even assuming for the sake of argument that the Glass Hill Preserve/SNA were to be analyzed as an important recreation opportunity, the potential impacts to the Glass Hill Preserve/SNA associated with RFA1 would be less than significant because the RFA1 features near the Glass Hill Preserve/SNA are access roads located 1.6 miles away.³⁰ These access roads will introduce only mild visual contrast with the existing landscape.³¹</p>
Susan Geer	<p>Approval of the Morgan Lake route signals a tragedy for state Protected Areas of Oregon, downgrading their ecological integrity and putting special status species further at risk. Allowing a route through the middle of an established conservation easement signals a huge loss for the conservation community even if they do not yet realize it.</p>	<p>The Council approved the Morgan Lake Alternative in its Final Order on Idaho Power’s ASC. Because the Council has already approved the Morgan Lake Alternative, this comment is outside the scope of RFA1.</p>
<i>Allegations regarding Piecemeal Review</i>		
STOP B2H	<p>STOP B2H argues that Idaho Power is submitting RFAs in piecemeal fashion intentionally to avoid greater public engagement, and recommends that the RFA1 should be viewed as new application.</p>	<p>Idaho Power respectfully disagrees with STOP B2H’s assertion that RFA1 should be analyzed as a new application. RFA1 includes discrete route changes and road modifications that include impacts that are substantially similar in nature to the impacts already approved in the Council’s Final Order on the ASC.</p> <p>Additionally, STOP B2H’s allegations regarding Idaho Power’s intentions regarding the RFAs are entirely</p>

³⁰ DPO on RFA1 at 117.

³¹ DPO on RFA1 at 141.

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Commenter	DPO Comment	Idaho Power Company’s Response
		unfounded. As described in the RFA DPO ³² and in oral comments from B2H Project Manager Joseph Stippel at the July 18, 2023 RFA DPO Comment Hearing, the transmission line alignment modifications are discrete changes that were driven by Idaho Power continuing to work with landowners to reduce impacts and refine the project location prior to construction. The road modifications included were intended to refine access road locations and improve constructability of the project.
<i>Mapping</i>		
STOP B2H	STOP B2H asserts that Idaho Power’s maps do not comply with Council rules, and asserts that STOP B2H had difficulty locating new access roads, and further asserts that “landowners and other interested parties cannot find all the information they need to properly comment on RFA 1 and therefore there needs to be a new map set developed and an extension of time so all parties can get their bearing and comment effectively.	Idaho Power respectfully disagrees with STOP B2H’s assertion that the maps do not comply with Council rules. Idaho Power provided mapping with the RFA1 submittal showing a sufficient level of detail to delineate the site boundary additions included in RFA1. In particular, the maps included as references on page 5 of STOP B2H’s DPO comments include a legend that shows that the new site boundary additions are shown with a black and white outline, and the previously approved grey shading reflects site boundary that was previously approved. Idaho Power opposes STOP B2H’s request for a new map set and for an extension of the comment period.
<i>Helicopter Use</i>		
STOP B2H	STOP B2H asserts that shortening the time periods described in GEN-PS-01 will increase the risk of health and safety impacts resulting from helicopter use, and proposes that the 30 day notice	The condition GEN-PS-01 contemplates that Idaho Power will finalize a Helicopter Use Plan in coordination with ODOE and each affected county where helicopter use is anticipated during construction.

³² DPO on RFA1 at 11.

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Commenter	DPO Comment	Idaho Power Company’s Response
	<p>requirements for adjacent landowners from the original condition language should be retained, and the 30 day notice requirement to the Oregon Department of Aviation (“ODA”) for consultation should be retained unless ODA approves a shorter timeframe in writing. .</p>	<p>The DPO includes the following modification to GEN-PS-01:</p> <p>At least 90 days prior to use of a helicopter(s) during construction, <u>unless otherwise agreed to by the Department</u>, the certificate holder shall submit to the Department and each affected County Planning Department a proposed Helicopter Use Plan. The plan must be approved by the Department, in consultation with each county where helicopter use is proposed, prior to use of a helicopter during construction. The certificate holder shall conduct all work in compliance with the approved Helicopter Use Plan. The Helicopter Use Plan shall identify or provide:</p> <ul style="list-style-type: none"> a. The type of helicopters to be used (all helicopters must be compliant with the noise certification and noise level limits set forth in 14 CFR § 36.11); b. The duration of helicopter use; c. Approximate helicopter routes to be used;

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Commenter	DPO Comment	Idaho Power Company’s Response
		<p>d. Protected areas and recreation areas within two miles of the approximate helicopter routes;</p> <p>e. Roads or residences over which external loads will be carried;</p> <p>f. Multi-use areas and light-duty fly yards containing helipads shall be located:</p> <p>(i) in areas free from tall agricultural crops and livestock;</p> <p>(ii) at least 500 feet from organic agricultural operations; and</p> <p>(iii) at least 500 feet from existing dwellings on adjacent properties;</p> <p>g. Flights shall occur only between sunrise and sunset;</p> <p>h. At least 30 days Prior to initiating helicopter operations at any multi-use area or light-duty fly yard, the certificate holder shall contact adjacent property owners within 1,000 feet of the relevant multi-use area or light-duty fly yard;</p> <p>i. At least 30 days prior to initiating Prior to helicopter operations, the certificate holder shall consult with the Oregon Department of Aviation regarding the</p>

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Commenter	DPO Comment	Idaho Power Company’s Response
		<p>preparation and posting of notices to airmen regarding the location and nature of work being performed. The notice will be posted at each of the public airports in the vicinity of the facility to alert other aviators of the location and timing of facility-related helicopter construction activities; and</p> <p>j. The certificate holder shall maintain a customer service telephone line to address, among other things, complaints regarding helicopter operations.</p> <p>[Public Services Condition 3; Final Order on ASC, AMD1]</p> <p>As noted in the DPO, the modifications to the timing in condition GEN-PS-01 are intended to allow additional flexibility in timing for preconstruction conditions:</p> <p>As described in Section II.B.1 of this order, RFA1 includes the certificate holder’s request to amend conditions with preconstruction timing constraints. As presented in Attachment 1, the Department recommends Council amend the timing constraints to allow for</p>

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Commenter	DPO Comment	Idaho Power Company’s Response
		<p style="text-align: center;">additional flexibility in timing of preconstruction compliance.³³</p> <p>Idaho Power proposed these modifications to allow additional flexibility in scheduling helicopter operations. If the Council would prefer to include a defined period for notice, Idaho Power proposes that a 3-day landowner notice is sufficient to preserve the flexibility of the construction process. This will create a more adaptable approach for the construction team to work with adjacent landowners on a schedule that is adaptable to the needs of everyone, including impacted landowners. For example, with a shorter notice period, Idaho Power may be able to accommodate landowner requests for modifications to scheduling helicopter activity, however, with a longer notice period, Idaho Power would not be able to make such accommodations.</p>
STOP B2H	STOP B2H also comments that GEN-PS-01 fails to identify noise sensitive properties or identify unique hazardous locations.	<p>There is no requirement to analyze construction noise, including helicopter use, or requirement to identify noise sensitive properties in connection with helicopter use. As noted in the DPO regarding construction noise:</p> <p style="padding-left: 40px;">Because construction related noise is exempt from the DEQ noise rules, an evaluation of construction noise generated from auxiliary vehicle use on new or improved roads, and multi-use areas, and helicopter use at NSRs is not required.³⁴</p>

³³ DPO on RFA1 at 198 n.205.

³⁴ DPO on RFA1 at 223 n.255

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Commenter	DPO Comment	Idaho Power Company’s Response
<i>Soil Protection</i>		
STOP B2H	<p>STOP B2H comments that ODOE’s recommended revisions to site certificate condition GEN-SP-01 are inconsistent with the Council’s obligation to ensure compliance with state laws and council rules effective the date the amended site certificate is issued. STOP B2H asserts that revising the condition to include “unless otherwise agreed to by the Department” allows the Oregon Department of Energy to allow the developer to avoid compliance with the Council Standard addressed by the National Pollutant Discharge Elimination System (“NPDES”) 1200-C and Erosion and Sediment Control Plan (“ESCP”) contained in the site certificate. STOP B2H further asserts that this revision “circumvents the procedure in the Site Certificate requiring the agency consultation process be followed for changes in the Soil Protection Standard and plan.”</p>	<p>The revision to Soil Protection Condition 1 (Condition GEN-SP-01) that STOP B2H cites reads:</p> <p style="padding-left: 40px;">During construction of the facility, the certificate holder shall conduct all work in compliance with the NPDES 1200-C General Construction Permit, ESCP or revised ESCP if applicable. The ESCP shall be revised if determined necessary by the certificate holder, certificate holder’s contractor(s) or the Department. Any Department-required ESCP revisions shall be implemented within 14-days, unless otherwise agreed to by the Department based on a good faith effort to address erosion issues.³⁵</p> <p>As ODOE explained in the DPO, an ESCP can be revised throughout construction to address numerous changes but the language of existing Soil Protection Condition 1 (Condition GEN-SP-01) could be interpreted to limit the ESCP to the version approved prior to construction.³⁶ ODOE further asserted that it must be given authority to require revisions to the ESCP because it is the ESCP that Council relies upon to ensure that erosion impacts are minimized, in</p>

³⁵ DPO on RFA1 at 43.

³⁶ DPO on RFA1 at 43.

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Commenter	DPO Comment	Idaho Power Company’s Response
		compliance with the Soil Protection Standard. For these reasons, ODOE recommended the revisions to Soil Protection Condition 1 (Condition GEN-SP-01).
<i>Blasting Plan</i>		
STOP B2H	<p>Condition GEN-SP-04(a) Page 25 of First Amended Site Certificate: Makes significant changes in the requirements regarding the Blasting Plan which should not be implemented including: Adding the word “related blasting” to the first line of Item (a) would result in no longer requiring the developer to determine whether there will be a need for blasting prior to the start of construction. The changes to this site certificate condition results in a failure of the Site Certificate to provide for the safety of property owners impacted by the development. It also places at risk the requirement that the developer identify wells and springs that may be impacted by blasting that is required as a monitoring condition. Impacts to wells and springs can pose a health hazard to citizens as well as cause significant economic damages in the event the developer fails to provide mitigation for the impacts. The change fails to assure compliance with council standards including providing for the health and safety of citizens, provide mitigation for impacts to resources, and the requirement that the developer assume the costs of monitoring.</p> <p>*** STOP recommends that the following changes should be incorporated in Gen-SP-01 to comply with ORS 469.401(2):</p>	<p>As an initial matter, the proposed amendment to Soil Protection Condition 4 (Condition GEN-SP-04), subsection (a) would not result in Idaho Power being allowed to avoid ODOE review of the final Framework Blasting Plan. Rather, the change from “[p]rior to construction” to “[p]rior to construction-related blasting” simply allows Idaho Power to submit the final Framework Blasting Plan to ODOE closer to (but still prior to) the time blasting activities are anticipated to occur during the construction process. This change in timing is necessary because Idaho Power will not have complete information about planned blasting at the time initially contemplated in the existing plan.</p> <p>Furthermore, per the proposed amendment to subsection (b), Idaho Power is still required to discuss with the landowner any blasting that the Company plans to conduct on the landowner’s property prior to any construction-related blasting occurring. If the landowner identifies a natural spring or well on the property, Idaho Power must notify the landowner that at the landowner’s request, Idaho Power will conduct pre-blasting baseline flow and water quality measurements for turbidity. Moreover, per the condition, Idaho Power is required to compensate the landowner for adequate repair or replacement if damages to the flow or quality of the natural spring are caused by blasting.</p>

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Commenter	DPO Comment	Idaho Power Company’s Response
	<p>a. Require the developer to ask the landowner to identify natural springs or wells on their property. As the condition now reads, it would be the responsibility of the landowner to recognize the need to identify these resources as noted in the statement on Page 26, line 1 “If the landowner identifies.”</p> <p>b. The water quality measurements should not be limited to assessing “turbidity.” Potential impacts to wells and springs as a result of blasting are multiple due to the potential for rocks surrounding the blast site to be fractured or damages to containers of hazardous substances normally contained such as underground oil drums, septic tanks, etc., or the creation of inter-aquifer leakage. Ground Water contaminants that typically move slowly thereby reducing the impact of contaminants can move rapidly through fractures in rocks caused by Blasting.</p> <p>c. To provide for the safety of the public and employees, a site certificate condition should be added requiring the blaster to meet the qualifications required by Chapter XII 1926.901 Blaster Qualifications.</p>	<p>With respect to STOP B2H’s proposed amendments to Soil Protection Condition 1 (Condition GEN-SP-01), similar amendments regarding water quality monitoring were already litigated at the EFSC proceeding for the ASC and EFSC adopted the Hearing Officer’s conclusion that such changes were unnecessary in light of the requirements in Soil Protection Condition 4.³⁷</p> <p>STOP B2H’s recommendation that blasters meet the qualifications required in 29 CFR 1926.901 is also unnecessary as the Framework Blasting Plan already requires the following:</p> <p>The Construction Contractor(s) will use qualified, experienced, and licensed blasting personnel who will perform blasting using current and professionally accepted methods, products, and procedures to maximize safety during blasting operations. Blasting procedures will be carried out according to, and in compliance with, applicable laws and will be closely monitored by the [Compliance Inspection Contractor (“CIC”)].³⁸</p>
<i>Landowner Notification</i>		

³⁷ See Final Order at 41; Final Order, Attachment 6, Contested Case Order (CCO), as Amended and Adopted by Council at 280-81, 292.

³⁸ Final Order, Attachment G-5, Draft Framework Blasting Plan at 2 (Sept. 27, 2022) (available at <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2022-09-27-Attachment-G-5-Draft-Amended-Framework-Blasting-Plan.pdf>) (last visited July 18, 2023).

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Commenter	DPO Comment	Idaho Power Company’s Response
STOP B2H	<p>Notice has not been provided per ORS 183.415. This statute requires specific actions when “actions taken by state agencies” affects the public.</p> <p style="text-align: center;">* * * * *</p> <p>No such information was provided to the impacted people in person, by registered or certified mail even though every residence within at least one half mile of the transmission line will be affected by the noise exemption and variance that EFSC has approved as well as the fact that ODOE and EFSC were provided comment during the original Site Certificate process regarding the failure of the agency to meet the Public Notice Requirements of Oregon Statutes when their actions may impact a landowner.</p>	<p>ORS 183.415 applies only “[i]n a contested case[.]”³⁹ The DPO hearing is not a contested case,⁴⁰ and for that reason ORS 183.415 does not apply to this DPO hearing.</p> <p>Rather, notice of the DPO must be issued consistent with ORS 469.370(2). ODOE provided notice of the DPO in accordance with that statute.⁴¹</p>

³⁹ ORS 183.415(2).

⁴⁰ OAR 345-015-0220(1).

⁴¹ Request for Comments on the Complete Request for Amendment 1 and Draft Proposed Order (June 14, 2023) (available at <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2023-06-14-B2H-AMD1-DPO-Public-Notice.pdf>) (last visited July 18, 2023).

ATTACHMENT A

to

**Idaho Power Company's Responses to
RFA1 DPO Public Comments**

July 19, 2023

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
PCN 5

In the Matter of
IDAHO POWER COMPANY,
Petition for Certificate of Public
Convenience and Necessity.

**TRANSCRIPT
OF
April 19-20, 2023
EVIDENTIARY HEARING**

BEFORE: ADMINISTRATIVE LAW JUDGE, JOHN MELLGREN

Transcript Prepared by:
Jean Mueller Transcribing
PO Box 1049
Lebanon, OR 97355
(541)259-1139

1 Do you know, Mr. Lautenberger, the dollar value of
2 cropland wheat that lies within the ROW in a given
3 year for a distance of say one mile?

4 **A.** No. That's not part of my expertise or analysis.

5 **Q.** That dollar value is significant, I might add,
6 it's in the neighborhood of \$21,000 for (*inaudible -*
7 *talking over each other*) --

8 MS. PEASE: Your Honor, I would object to the
9 question. Mr. Myers is providing testimony here
10 rather than asking questions.

11 ALJ MELLGREN: Thank you, Ms. Pease. Mr.
12 Myers, please limit yourself to questions in a
13 relevant context for those questions.

14 MR. MYERS: Yes, Your Honor. I believe that
15 the dollar amount, \$21,000, is very relevant to the
16 context of the questions.

17 MR. MYERS:

18 **Q.** Mr. Lautenberger, on the Wildfire Mitigation Plan,
19 page 26 in your -- one of the -- 2300, page 13, I
20 believe also. The only risk listed as having
21 consequence -- and I might describe "consequence" as
22 risk having a value in the IPC's views -- are homes,
23 businesses. There are subsequent or supplemental
24 values including timber, structures, and protected
25 habitat.

1 I'll rephrase that question again. The only risk
2 listed as having consequence or risks having value are
3 homes, businesses, and people, is that correct?

4 **A.** So, I don't have that page in front of me, but I
5 am very familiar with the analysis, so I'm going to go
6 ahead and answer, but I'd request that if it would be
7 possible, if you could put that up on the screen for
8 others, I think that would be helpful.

9 So, that being said, we need to get some
10 terminology straight here. And the terminology that
11 I'll be using is risk is the product of probability
12 and consequence. Probability is the likelihood that a
13 fire starts, and that's limited to fires started by
14 power lines, for the sake of our discussion. And then
15 the consequence is the negative impacts to different
16 assets at risk. Assets at risk that are typically
17 prioritized when looking at utility caused fires are
18 loss of life and loss of structures, and those were
19 the two assets at risk that were considered
20 consequences in the risk modeling that was conducted
21 by Idaho Power to inform its Wildfire Mitigation Plan.

22 I hope that answers your question.

23 **Q.** Yes. So, at this point, IPC does not consider the
24 mature dryland wheat crop as having any consequence
25 value, is that correct?



Oregon

Kate Brown, Governor



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To: Energy Facility Siting Council

From: Sarah Esterson, Senior Policy Advisor

Date: September 10, 2021

Subject: Agenda Item D (Information Item): Overview of the Energy Facility Siting Council's Retirement and Financial Assurance standard (Part 2) for the September 24, 2021 EFSC Meeting

BACKGROUND

The Energy Facility Siting Council (Council) was created to oversee a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in Oregon. ORS 469.300. To carry out this purpose, the legislature entrusted the Council with the authority to decide whether to issue a site certificate for any energy facility proposed to be constructed or operated in Oregon. ORS 469.470(1). The Council's decision to issue a site certificate is binding upon state agencies and local governments and requires those agencies and governments to issue any permits specified in the site certificate without further proceedings. ORS 469.401(3).

In order to issue a site certificate, the Council must, in part, determine that the preponderance of the evidence on the record of proceedings on an application supports the conclusion that the facility, "complies with the applicable standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet." ORS 469.503(1). With some exceptions, the Council must make similar finding of compliance for other state laws and administrative rules, and with the statewide land use planning goals adopted by the Land Conservation and Development Commission. See ORS 469.503(3) and (4).

The legislature provided the Council with broad authority to determine both the scope and format of its standards, but has provided a number of subjects which the standards may address, including the "financial ability and qualifications of the applicant." ORS 469.501(1)(d). The Council adopted a standard to address this subject under OAR 345-022-0050, the "Retirement and Financial Assurance Standard."

In Part 1 of this overview, presented at the August 27, 2021 Council meeting, staff provided a summary of how the Retirement and Financial Assurance Standard works, legislative and rulemaking history of the standard, and an overview of the substantive requirements of the standard and its associated application requirements. In Part 2, staff will provide a more

detailed explanation of how the standard is applied, including an explanation of the process for retiring a site and for preparing, reviewing, and updating cost estimates.

APPLICATION OF THE STANDARD

As part of its review, the Council must review the applicant's proposed retirement estimate and determine if the amount is sufficient, and if any additional monitoring and mitigation programs or conditions are required to ensure that the site will be able to be restored to a useful, non-hazardous condition. The Council's rules establish additional procedural and substantive requirements through mandatory conditions and compliance obligations. These include rules:

- Requiring the certificate holder to submit a bond or letter of credit that is acceptable to Council prior to beginning construction and maintaining that bond or letter of credit until the facility has been retired. OAR 345-025-0006(8)
- Requiring the certificate holder to submit a proposed retirement plan for Council approval within 2 years after permanent cessation of construction or operation of the facility, and retiring the facility according to the plan. OAR 345-025-0006(9)
- Authorizing use of the bond or letter of credit to retire the facility according to a retirement plan developed by the Department if the Council finds that the certificate holder failed to meet its obligations to retire the facility. 345-025-0006(16)

PREPARATION AND REVIEW OF DECOMMISSIONING COST ESTIMATE

Decommissioning a facility typically includes dismantling facility structures and components, removing materials from the site for recycling or disposal, and restoring the site to a useful, nonhazardous condition. The extent of required decommissioning activities may be influenced by the zoning of the site, agreements with underlying landowners, and ongoing use of related or supporting facilities for other purposes.

It is important to note that a certificate holder is not required to remove all facility components as part of the decommissioning process. Certain facility components, such as access roads or transmission infrastructure may be left in place if they would support allowed uses at the site. For many facilities sited on lands zoned for Exclusive Farm Use, foundations and buried utility infrastructure are only required to be removed to a depth of three feet, and components that are more than three feet below grade may be abandoned.

Estimated Cost of Site Restoration

While no specific methodology is required to be used when estimating decommissioning costs, all applicants must include the specific actions and tasks to restore the site to a useful, non-hazardous condition; an estimate of the total and unit costs of restoring the site to a useful, non-hazardous condition; and a discussion and justification of the methods and assumptions used to estimate site restoration costs. OAR 345-021-0010(1)(w)(B)-(D).

While the applicant is also required to estimate the projected useful life of the facility no discounting of future costs is allowed, and the estimate must be provided using current cost values. OAR 345-021-0010(1)(w)(C). As discussed below, an annual inflation adjustment is provided to ensure that future price changes are accounted for.

Major cost components included in decommissioning estimates include direct costs such as labor costs, equipment operation and maintenance, tipping fees, permitting fees and revegetation and restoration, as well as indirect costs including site mobilization and contractor overhead, profit markup, and administration. Historically, the Department has recommended that the Council include a 10 to 20 percent contingency on the total estimated costs to account for any adverse development that may occur during operation of the facility or the decommissioning process. Adverse development may include increased regulatory or permitting requirements or the development of hazardous conditions on the site, such as soil contamination, that require higher levels of remediation than accounted for in the estimate. Some certificate holders with more detailed cost estimation methodology have requested a smaller contingency value.¹

As an example, the applicant’s estimated decommissioning and site restoration costs for the Madras Solar Energy Facility, with contingencies for indirect costs, were approximately \$4 million. The department recommended the application of an additional 1 percent contingency to purchase a performance bond, a 10 percent contingency for the Department’s administration of the decommissioning process, and a 10 to 20 percent for future development. The table below shows the approved decommissioning cost estimate and sum total costs of approximately \$4.9 million from the Final Order on the Application for Site Certificate for the Madras Solar Energy Facility.

Table 1: Madras Solar Energy Facility – Retirement Cost Estimate

Task or Action	Quantity	Unit Cost (\$)	Unit	Estimate (\$)
<u><i>Solar Photovoltaic Energy Generation Components</i></u>				
Solar PV Panel	175,446	\$1.79	Panel	\$314,867
Tracker	569,980	\$2.11	Linear Ft.	\$1,204,374
Power Conversion Station (PCS)	19	\$6,981	Location	\$132,641
Underground Cable	56	\$241	Tail	\$13,492
<u><i>Battery Storage</i></u>				
PCS – (Battery) Location	19	\$4,978	Location	\$94,578
<u><i>Substation, POI Station and Switching Station</i></u>				
POI Station	1	\$11,442	Location	\$11,442
Switching Station	1	\$5,762	Location	\$5,762
Substation	1	\$60,399	Location	\$60,399
Substation Auxiliary Equipment	1	\$23,469	Location	\$23,469
<u><i>Other Structures</i></u>				
O&M Enclosure	1	\$2,256	Each	\$2,256
Staging/Laydown	1	\$4,704	Location	\$4,704
Perimeter Fence	28,681	\$3.86	Linear Ft.	\$110,719
Roads	3,564	\$4.72	Sq. Yd.	\$16,817
<u><i>Other Tasks and Actions</i></u>				
Stored Materials	1	\$760	Lump Sum	\$760
Tipping Fees	5,050	\$110	Tons	\$555,930

¹ See Final Order on Application for Site Certificate for the Bakeoven Solar Project, April 24, 2020, pg. 133.

Table 1: Madras Solar Energy Facility – Retirement Cost Estimate

Task or Action	Quantity	Unit Cost (\$)	Unit	Estimate (\$)
Site Reclamation	400	\$200	acre	\$80,000
Utility disconnect	1	\$5,000	Each	\$5,000
Surveys	1	\$25,000	Lump Sum	\$25,000
Environmental	1	\$50,000	Lump Sum	\$50,000
Safety	1	\$25,000	Lump Sum	\$25,000
OSHA sanitary	1	\$50,000	Lump Sum	\$50,000
Field Office	10	\$1,250	months	\$12,500
Proj Mgmt	10	\$12,500	months	\$125,000
Mobilization	1	\$200,000	Lump Sum	\$200,000
Demobilization	1	\$150,000	Lump Sum	\$150,000
Subtotal =				\$3,274,710
General Costs				
Contingency	10		Percent	\$327,471
Overhead, Profit	15		Percent	\$491,206
Subtotal =		\$818,677		
Subtotal, All Tasks or Actions and Applicant Contingencies		\$4,093,387		
Department Applied Contingencies				
Performance Bond	1		Percent	\$40,933
Department Administration and Project Management	10		Percent	\$409,338
Future Development Contingency	10/20		Percent	\$418,795
Total Site Restoration Cost with Department Adjusted Contingencies (Q4 2019 Dollars)				\$4,962,453

The review process for the final bond and letter of credit amounts includes submission of the decommissioning estimate by the certificate holder, in Excel. The information is then reviewed by a Department Senior Siting Analyst and Fiscal Analyst to ensure that the prescribed methods have been followed correctly. Following review of the site certificate condition requirements, inflation estimate and methods, a certificate holder receives written concurrence from the Department of whether the estimate is accurate. Once confirmed by the Department to be accurate, the certificate holder then submits an executed bond or letter of credit, using a Council approved form and financial institution.

ADJUSTMENT OF BOND OR LETTER OF CREDIT AMOUNT

Decommissioning estimates for a proposed facility or facility with proposed changes are evaluated by Council during the siting review process. If approved by Council through the siting review process, the facility decommissioning estimate: 1) is based on the present dollar value at the time the Application for Site Certificate (ASC) or Request for Amendment (RFA) is deemed complete by the Department; and 2) accounts for all proposed facility components. Council considers these two factors and imposes site certificate conditions requirements for inflation and final built facility adjustments applicable to the final bond or letter of credit amount, as further described below.

Inflation Adjustments

Site certificate conditions for the decommissioning bond or letter of credit require certificate holders to adhere to two inflation adjustments. The first inflation adjustment requires an evaluation of the change in dollar value from the quarter/year the estimate is based to the quarter/year of facility construction commencement. Site certificate conditions prescribe, with some flexibility, the first adjustment method as follows:

- The final amount of the bond or letter of credit must be adjusted to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor agency and using the index value and the quarterly index value for the date of issuance of the bond or letter of credit.
- If at any time the index is no longer published, the certificate holder must request Department/Council input on an acceptable, comparable calculation to adjust the approved dollar amount to present value.

The second inflation adjustment applies annually after the initial bond or letter of credit is received from the certificate holder by the Department:

- The total bond or letter of credit amount must be adjusted on annual basis, based on a date cycle consistent with the date of issuance/effective date, using the same methods identified above.

The condition requires the bond or letter of credit amount to be evaluated annually by the Department's Fiscal Analyst, and to be adjusted based on changes in the prices of goods and services in the U.S., as reflected by the GDP Price Deflator. Based on this review, the Department issues letters to all certificate holders requesting adjustment of the bond or letter of credit amount to ensure the condition is both satisfied and accurately accounted.

Built Facility Adjustments

Site certificate conditions for the decommissioning bond or letter of credit allow certificate holders to adjust the final amount based on final number of facility components built within the allowed construction duration. It is fairly standard for a built facility to include significantly less number of facility components than the maximum number approved. This adjustment applies solely to the number of facility components.

Historically, site certificate conditions have not authorized a certificate holder to change the tasks, actions or cost estimating method as part of the adjustment. Because site certificate conditions do not allow adjustment to the decommissioning tasks, actions or cost estimating method, if requested by a certificate holder, would be considered substantive given that the standard requires Council to find that the facility decommissioning amount is satisfactory for restoring the site to a useful, nonhazardous condition, prior to approval. Therefore, based on typical site certificate condition language, a change in tasks, actions and estimating methods would necessitate formal review, likely in the form of an amendment.

Adjustment Considerations

Council's evaluation of whether an applicant or certificate holder's decommissioning estimate is satisfactory for restoring the facility site to a useful, nonhazardous condition is discretionary. More specifically, to find that a decommissioning estimate is satisfactory, there is not a specific estimating method or tool that must be used; there is not a specific or average amount that must be identified; and there are not restrictions on the process Council imposes to ensure that the decommissioning amount is satisfactory for the duration of facility operations. Therefore, given that estimating methods differ, and decommissioning activities and cost may vary over time, beyond variation in inflation, Council has the authority to consider whether site certificate conditions should contemplate other types of adjustments, as part of its findings of whether the decommissioning estimate is satisfactory. Other types of adjustments could include periodic revaluation in estimating methods and/or decommissioning and restoration actions by the certificate holder, the Department or Department's third-party consultant.

Applicant/Certificate Holder Requests for Adjustments

Applicant's and certificate holders often request Council consideration of other adjustments to the decommissioning amount, either short or long term. Some applicants have requested that Council allow credit for the scrap value of metals in facility components to be included in decommissioning cost estimates, but since at least the mid-2000's the Council has not allowed scrap values to be considered based on concerns over fluctuating market value and the risk that third party creditors or other parties could assert a claim against the scrap or salvage value in the event that a certificate holder became insolvent or declared bankruptcy.

Some applicants have requested Council consideration of a reduced bond or letter of credit after the facility is in commercial operation, based on assurance provided through a security agreement and an executed Power Purchase Agreement. For example, in one ASC, an applicant proposed to submit to the Department, prior to construction, a bond or letter of credit in the approved amount, to be in place until the facility was in commercial operation. Then, after the initial year of operation, applicant proposed to file a Uniform Commercial Code (UCC) financing statement with the State of Oregon, where evidence of the filing would be provided to the Department prior to construction and the bond or letter of credit would be reduced to \$1. Then, in Year 20, or the last year of the applicant's Power Purchase Agreement (PPA), whichever were later, the bond or letter of credit would be based on the full facility decommissioning amount, for the remainder of the facility's operational life.

Council's review of the above example concluded that uncertainties remain in the assurances provided to the State by a PPA, even with consideration of the applicant's proposed conditions to execute a security interest with the State. Council concluded that the variation in proposal to meet the standard, from the historically accepted full bond or letter of credit amount necessary for facility decommissioning, would be more appropriately evaluated through rulemaking, where information and expertise of subject matter experts could be considered, rather than relying solely on information provided by the applicant in favor of the proposal.

AUTHORITIES

Statutory Authority

469.501 Energy facility siting, construction, operation and retirement standards; exemptions; rules.

(1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects.

(d) The financial ability and qualifications of the applicant.

Administrative Rules

345-021-0010 - Contents of an Application

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

*(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.

*(w) **Exhibit W.** 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

ENERGY FACILITY SITING COUNCIL STANDARD

345-022-0050 - Retirement and Financial Assurance

To issue a site certificate, the Council must find that:

(1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.

(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

CONDITIONS

345-025-0006 - Mandatory Conditions in Site Certificates

(7) The certificate holder must prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.

(8) Before beginning construction of the facility, the certificate holder must submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder must maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility.

(9) The certificate holder must retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder must retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder must pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.

(16) If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0410, the Council must notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Department within a reasonable time not to exceed 90 days. If the certificate holder does

not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in section (8) of this rule to restore the site to a useful, nonhazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR chapter 345, division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder must pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council must issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan

TERMINATION

345-027-0110 - Termination of a Site Certificate

(1) A certificate holder may apply to the Council to terminate a site certificate at any time, subject to the requirements of this rule.

(2) A certificate holder must apply to the Council to terminate a site certificate within two years following cessation of construction or operation of the facility.

(3) If the certificate holder fails to apply to the Council to terminate the site certificate and the Council finds that the certificate holder has permanently ceased construction or operation of the facility, then the Council may terminate the site certificate according to the procedure described in OAR 345-025-0006(16).

(4) In an application for termination of the site certificate, the certificate holder must include a proposed final retirement plan for the facility and site. The certificate holder must submit two printed copies of the application for termination and the proposed final retirement plan, and an electronic version of the application for termination and the proposed final retirement plan in a non-copy-protected electronic format acceptable to the Department. The certificate holder must submit additional printed copies of the application for termination and the proposed final retirement plan to the Department upon request.

(5) In the proposed final retirement plan, the certificate holder must include:

(a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment;

(b) A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including information on how impacts to fish, wildlife and the environment would be minimized during the retirement process;

(c) A current detailed cost estimate and a plan for ensuring the availability of adequate funds for completion of retirement; and

- (d) An updated list of property owners, as described in OAR 345-021-0010(1)(f).*
- (6) Within 15 days after receiving an application for termination of a site certificate, the Department must:*
- (a) Send a notice of the application, specifying a date by which comments on the application are due, by mail or email to:
 - (A) All persons on the Council's general mailing list, as defined in OAR 345-011-0020;*
 - (B) All persons on any special list established for the facility; and*
 - (C) The property owners on the updated list submitted by the certificate holder under section (5) of this rule;**
 - (b) Send copies of the application for termination by mail or email to the reviewing agencies for the facility, and ask those agencies to comment by a specified date; and*
 - (c) Post an announcement of the application for termination on the Department's website.*
- (7) The Council must review the proposed final retirement plan and must consider any comments received from the public and the reviewing agencies. The Council may approve the proposed final retirement plan or modify the plan to comply with the rules of this chapter and applicable conditions in the site certificate. If the plan is approved, the Council must issue an order authorizing retirement according to the approved or modified final retirement plan and subject to any conditions the Council finds appropriate. The Council's order may be appealed as described in ORS 183.480.*
- (8) When the Council finds that the certificate holder has completed the retirement of the facility according to the Council's order authorizing retirement, the Council must issue an order terminating the site certificate.*



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To: Energy Facility Siting Council

From: Christopher M. Clark, Siting Policy Analyst & Rules Coordinator

Date: August 13, 2021

Subject: Agenda Item G (Action Item):
Surety Bond Template Update for the August 27, 2021, EFSC Meeting

Attachments: Attachment 1: Draft Amended Bond Template
Attachment 2: Draft Amended Letter of Credit Template

STAFF RECOMMENDATION

Staff recommends the Council amend the Surety Bond Template, as shown in Attachment 1, to ensure that a bond would perform if a Surety gives notice of its intent to cancel a bond and the certificate holder fails to provide an acceptable replacement.

BACKGROUND

The Council has adopted rules requiring each certificate holder to provide a surety bond or letter of credit before beginning construction of a facility. The bond or letter of credit must be provided in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition, and must be maintained at all times until the facility has been retired. OAR 345-025-0006(8). These requirements provide assurance that the people of Oregon will not be burdened with the costs of restoring the site if the certificate holder is unable or unwilling to properly decommission the facility following permanent cessation of construction or operation of the facility.

Both bonds and letters of credit are commonly used and accepted forms of security, but there are some important differences. A surety bond provides a guarantee that the principal (e.g. the certificate holder), will meet the requirements of a contract (e.g. the site certificate.) If there is a documented breach in the terms of the contract, the surety will make payment to the Obligee (e.g. the State) to ensure that the contract is fulfilled. A letter of credit, on the other hand, is a bank's guarantee that it will pay a set amount to the letter holder upon demand and does not typically require proof of a breach to perform.

As shown in the table below, the Council has financial assurance on file for approximately \$168.2 million in estimated retirement costs. About 56 percent of the total amount was assured through letters of credit, with the remaining 44 percent assured through surety bonds.

Table 1: Energy Facility Security Deposits as of April 1, 2021.

Project Name	Instrument	20-21 Value
Biglow Canyon Wind Farm	LOC	\$17,825,000
Columbia Ethanol Project	Bond	\$315,244
Carty Generating Station	LOC	\$23,011,000
Coyote Springs Cogeneration	LOC	\$4,117,500
Golden Hills Wind	Bond	\$11,903,000
Hermiston Generating Project	Bond	\$7,102,200
Hermiston Power Project	LOC	\$5,139,883
Klamath Cogeneration Project	Bond	\$5,431,244
Klamath Generation Peakers	Bond	\$709,759
Klondike Wind Power III	Bond	\$11,857,000
Leaning Juniper Wind Power	Bond	\$12,245,000
Mist Underground Storage Facility	Bond	\$4,557,800
Montague Wind Power	Bond	\$7,865,000
Port Westward Generating Project	LOC	\$11,276,462
Shepherds Flat Central	LOC	\$10,451,000
Shepherds Flat North	LOC	\$8,672,000
Shepherds Flat South	LOC	\$10,225,000
South Mist Pipeline Extension	Bond	\$120,228
Summit Ridge Wind Farm	LOC	\$63,129
Stateline Wind Project-1&2	Bond	\$7,004,000
Stateline Wind Project-3	Bond	\$4,903,000
Wheatridge Renewable Energy Facility 1	LOC	\$3,444,000
TOTAL		\$168,238,449

The Council has adopted standardized templates for each security instrument that is accepted under the rules. The Council and Department periodically review the template language to ensure that the templates provide adequate assurance for the costs associated with retirement and site restoration and is consistent with current industry and regulatory practices. While both the bond and letter of credit templates were reviewed and are attached to this staff report, staff is not recommending changes to the letter of credit template at this time.

BOND TEMPLATE ASSESSMENT

The bond template provides that the bond will perform only when the certificate holder has failed to fulfill its obligations to retire the facility and restore the site. When a certificate holder permanently ceases construction or operation of a facility it must provide an application for termination of its site certificate that includes a final retirement plan for the site explaining the actions that will be taken to restore the site to a useful, non-hazardous condition. OAR 345-027-0110. The bond is released once the restoration activities described in an approved retirement plan are complete. If the certificate holder fails to submit a retirement plan, or fails to comply

with the plan it submitted, the Council may call on the bond as needed to restore the site. To ensure that funds will be available to restore the site in the event a certificate holder fails to retire the site the certificate holder must maintain a bond or letter of credit for the life of the facility.

During its last review of the bond template language at the January 22, 2021 meeting, the Council noted that the current bond template language does not clearly state that the bond would perform if a certificate holder fails to maintain acceptable security for the life of the facility. Specifically, the template states that in the event that a certificate holder fails to provide an acceptable replacement after a Surety provides notice of its intent to cancel the existing bond instead of providing that the bond will perform, the template states that the Department may take enforcement measures under OAR chapter 345, division 029:

“6. If the Surety cancels the bond prior to the Principal fulfilling its obligation to retire the facility and restore the site, but Principal does not provide alternate financial assurance approved by the Council within 90 (ninety) days after the date of notice of cancellation is received by the Obligee from the Surety, the Oregon Department of Energy *may take enforcement measures as described in OAR 345-029-0000 through OAR 345-029-0100.*” (Emphasis added.)

The enforcement procedures in OAR 345-029 are generally intended to obtain compliance through corrective actions but allow for sanctions such as civil penalties and the suspension or revocation of a site certificate if a certificate holder is unable, or unwilling, to take appropriate action. It is unclear that these sanctions would be effective to compel compliance with the retirement and financial assurance requirement, particularly when a certificate holder has permanently ceased construction or operation of a facility, or is facing financial conditions that would cause a surety to not renew or cancel its bond. We further note that any civil penalties assessed and collected through enforcement actions are statutorily required to be deposited in the State’s general fund and would not necessarily be available for the decommissioning and site restoration activities the bond is intended to assure.

The lack of a clear and effective mechanism to ensure that a certificate holder maintains a bond or letter of credit until the facility has been retired could expose the State to unacceptable risk. For this reason, staff recommends that the Council amend the bond template to clarify that if the certificate holder does not provide an acceptable replacement after a surety has given notice of its intent to cancel the bond, the surety may become liable for payment. This is consistent with the terms of the LOC template, and with decommissioning bond forms used by other regulatory agencies.¹

In addition, staff recommends that the provisions for expiration of the bond be removed so that the bond remains valid for the life of the facility, or until the surety provides a notice of intent to cancel the bond. The amount of bond may still be adjusted annually to reflect changes in inflation through the use of riders. In the alternative, an “evergreen” clause could be included

¹ For an example, see Oregon DOGAMI Performance Bond to Conduct Geothermal Well Drilling or Prospecting at: https://www.oregongeology.org/mlrr/forms/geothermal/Performance_Bond_Geo_06-2013.pdf

in the bond template which causes the bond to be automatically renewed every year unless the surety provides notice of its intent to not renew the bond. If the Council chooses not to remove the provisions for expiration of the bond, staff recommends that the conditions of performance be amended to allow the state to call on the bond if an appropriate replacement is not provided at least 30 days before the bond's expiration date in addition to the other changes recommended in this report.

Staff's recommended changes to the bond template are provided in Attachment 1. The current bond template requires the surety to give a 120-day written notice of its intent to cancel the bond to the Council. Staff recommends that the revised template language should also require notice to be given to the certificate holder, and that the certificate holder should continue to have 90 days from that date to provide a replacement before action is taken on the bond. If the Council adopts the recommended revision, staff will review internal operating procedures to ensure that appropriate notice is given to both the surety and certificate holder prior to taking action on any bond.

These changes are generally consistent with the Letter of Credit template provided as Attachment 2. The template establishes an Irrevocable Standby Letter of Credit (ISLOC) which is payable upon presentation to the issuing financial institution subject to certain terms and conditions. One condition requires a dated draw certificate describing the conditions under which the Council is presenting the ISLOC for payment. The draw certificate provided under ISLOC Exhibit B allows for presentation to be made when a financial institution provides notice of intent to not renew the ISLOC and the certificate fails to provide acceptable replacement security at least 30 days before prior to its expiration.

RECOMMENDED COUNCIL ACTION

Staff recommends the Council amend the bond template to provide that (1) the bond will not expire, but may be cancelled by the Surety with 120 days' notice and (2) the Surety will become liable for payment if the certificate holder does not provide an acceptable replacement for the bond at least 30 days before the cancellation date. Staff's recommended changes are provided in Attachment 1. Staff does not recommend changes to the Letter of Credit template at this time.

To: Energy Facility Siting Council

From: Irene Gilbert, Co Chair STOP BTH

Subject: “Requests for Contested Cases on Amendment I, B2H Transmission Line Site Certificate”. Required Information to request a Contested Case

(a) The person's name, mailing address and email address and any organization the person represents;

a. Irene Gilbert/2310 Adams Ave./La Grande, Oregon 97850

b. Email: ott.irene@frontier.com

c. Organization I represent and my qualifications to do so:

STOP B2H—Co-Chair : I am co-chair of STOP B2H and a member of the board of directors for the coalition. I am actively involved with planning, research and development of issues the non-profit organization is addressing related to this development. I drafted the comments for the issues I am representing the organization on. I have donated thousands of hours and hundreds of dollars to support the organization. The board of directors has determined that I am best qualified to address the issues being brought forth in this Contested Case Request.

2. The Public Interest:

I have been addressing issues with energy siting for a dozen years including participation in both state and county

advisory boards regarding energy development including the B2H transmission line. I served as Legal Research Analyst for the Friends of the Grande Ronde Valley and am a member of the Blue Mountain Alliance, the Rocky Mountain Elk Foundation, own and manage a small timber site as well as agricultural land, and have previously appeared in contested cases as a representative of the public interests regarding this project. I have also appeared as the representative of an individual landowner in the Contested Case Proceedings before the Oregon Public Utilities Commission.

3. Myself as an individual.

Personal Interest: I live in La Grande and my activities involve hunting, fishing, hiking, biking and am an avid user of the recreational areas of the state and this county. The quality of my life including the recreational activities, the culture and visual benefits that resulted in me living here will be degraded as a result of this transmission line. In addition, I experience a significant amount of empathy for the landowners whos property and livelihood is being damaged by this development. In addition, I have a financial interest in the impacts of this development. My

partner and I hold the contract for a Sporting business in La Grande. This contract is part of our financial security.

Project negative impacts to the local economy will impact the income to the business and could result in the new owner being unable to meet his commitments under his purchase agreement.

b) Attorney representation:

I am representing the contested case on behalf of STOP B2H, the public interest and myself as an individual. We reserve the right to obtain attorney representation later in the proceeding.

c) A statement of whether the person's request to participate in a contested case is as a party or a limited party, and if as a limited party, the precise area or areas in which participation is sought;

I am requesting participation as a full party to this contested case.

During the initial Contested Case hearing for this project, none of the organizations or members of the public were provided full party status.

Only the developer and the Oregon Department of Energy were allowed to participate as full parties. Following are examples of things that occurred as a result of limiting all public petitioners to items they commented on during the public comment period of the Contested Case regarding the Site Certificate for the B2H Transmission line:

1. The developer was able to request Summary Determinations for issues they wanted removed from the site certificate and none of the public participants were able to argue against their requests. The Hearings Officer approved the requests including removing pre-construction surveys for bats and species specific surveys for other wildlife. The public participants and the public being represented by STOP B2H and myself were denied the opportunity to submit opposing testimony even though there was strong disagreement with the removal of these site certificate conditions.
2. Allowing only Idaho Power and the Oregon Department of Energy full party status provided them both opportunity to testify in support of one another. The Hearings Officer used their agreement as supporting findings against the public. The petitioners were unable to submit similar comments supporting one another's comments. ODOE did not support the public's contested cases, and consistently argued in support of the developer, or in a few cases, remained silent. Allowing the developer and ODOE to work together against the public's Contested Cases provides an unfair advantage to the developer and fails to provide an unbiased review of the issues.

No other person is able to present these contested cases. I drafted the comments on these issues, and no one else submitted comments on these issues to allow them to request a Contested Case.

SPECIFIC ISSUES I AM REQUESTING CONTESTED CASES ON FOR STOP B2H, THE PUBLIC AT LARGE AND MYSELF AS AN INDIVIDUAL ARE ADDRESSED IN:

1. ATTACHMENT 1: Contested Case Request Regarding Bond
Along with Documentation Supporting the Statements and Need for this Contested Case Request
2. ATTACHMENT 2: Failure to Comply with Forest Practices Act
3. ATTACHMENT 3: Failure to Provide public Notice of Right to Participate in Contested Cases” Presented in behalf of the public interest and myself as an individual.

All three of these issues will require changes to the Conditions and Site Certificate to comply with the ODOE standards.

I believe this document provides the general information requested to participate in the Contested Case process. In the event that I have overlooked a requirement, please provide me an opportunity to provide the missing information.

Irene Gilbert, Co-Chair, Stop B2H

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Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: July 5, 2023

Subject: Agenda Items B (Public Hearing) and H (Information Item): Boardman to Hemingway Transmission Line: Public Hearings on the Draft Proposed Order and Possible Council Review of Draft Proposed Order on Request for Site Certificate Amendment 1 for the July 17-19, 2023 EFSC Meeting

Attachments: Attachment 1: [Draft Proposed Order on Request for Site Certificate Amendment 1](#) [hyperlink]
Attachment 2: Comments Received on Draft Proposed Order on Request for Site Certificate Amendment 1*
(*any comments received after the date of this staff report will be provided in Supplemental Council Packet Materials prior to the July 19, 2023 meeting)

STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) Draft Proposed Order (DPO) on Request for Amendment 1 (RFA1) of the Boardman to Hemingway Transmission Line Site Certificate recommends the Energy Facility Siting Council (EFSC or Council) approve the requested site certificate amendment and grant issuance of a first amended site certificate, subject to compliance with existing, recommended amended and new site certificate conditions.

APPROVED FACILITY OVERVIEW

The Boardman to Hemingway Transmission Line is an approved facility that includes an approximate 300 mile (275 miles in Oregon) electrical transmission line (primarily 500 kilovolt (kV)) that crosses five counties in Oregon, Morrow, Umatilla, Union, Baker, and Malheur counties. Approved related or supporting facilities include the Longhorn Substation in Boardman, Oregon, communication stations, access roads, pulling and tensioning sites and construction laydown areas.

CHANGES PROPOSED IN AMENDMENT 1 REQUEST

RFA1 seeks Council approval to (a) add alternative route corridors for the transmission line on three properties to accommodate requests by landowners to re-locate the facility on their land to minimize impacts while being able to meet design criteria; (b) add and refine of the location of roads resulting from additional design and engineering review associated with the approved

and proposed RFA1 route alternatives; (c) amend language of site certificate conditions to support implementation. Proposed RFA1 site boundary additions include approximately 8.8 miles of 500-kV transmission line alternatives, and approximately 45.9 miles of access road changes associated with the approved route and routes in RFA1, as detailed in the below table.

Table 1: RFA1 Proposed Alternative Route and Access Road Additions¹

Proposed Site Boundary Additions	County	Length of Addition – Transmission Line (miles)	Length of Addition – Access Road (miles)	Area of Addition (acres)	Description of Site Boundary Addition
Little Juniper Canyon Transmission Line Alternative ¹	Morrow	1.4	1.4	78.7	Shifted transmission line to the west to minimize impacts to proposed solar facility
Access Road Changes in Morrow County	Morrow	NA	4.2	61.9	Road design changes
Access Road Changes in Umatilla County	Umatilla	NA	3.4	71.3	Road design changes
Access Road Changes in Union County	Union	NA	1.8	36.7	Road design changes
True Blue Gulch Transmission Line Alternative ²	Baker	4.6	8.6	422.8	Adjusted transmission line to the west and south to minimize noise and visual impacts
Durbin Quarry Transmission Line Alternative ³	Baker	2.8	2.1	130.0	Shifted transmission line to avoid crossing ODOT quarry
Access Road Changes in Baker County	Baker	NA	17.0	95.5	Road design changes
Access Road Changes in Malheur County	Malheur	NA	7.4	139.1	Road design changes
TOTAL	NA	8.8	45.9	1,036.0	NA

Notes:

¹ The Little Juniper Canyon Transmission Line Alternative would be an alternative to 1.3 miles of Previously Approved transmission line.

² The True Blue Gulch Transmission Line Alternative would be an alternative to 2.9 miles of Previously Approved transmission line.

³ The Durbin Quarry Transmission Line Alternative would be an alternative to 2.8 miles of Previously Approved transmission line.

Source: B2HAMD RFA1 2023-06-08, Table 4.1-1. Proposed Site Boundary Additions

¹ The route and road additions are “additive;” certificate holder therefore would have more options and flexibility to accommodate landowner preferences and final facility design needs, however, the final facility will ultimately select one approved route, approved alternative route, or proposed routes in RFA1. Actual acreage/disturbance impacts from the facility will be significantly less than approved in the ASC and evaluated in the DPO.

Recommended Amended and New Site Certificate Condition Summary

RFA1 Attachment 6-1 presents the certificate holder's proposed changes to the description of the site boundary, approved transmission line corridors and access roads; and amendments to site certificate conditions. Based on the evaluation presented in DPO Section III. *Evaluation of Council Standards*, as applicable based on the certificate holder's proposed change, the Department's recommended changes to the site certificate and conditions are presented in the draft amended site certificate (Attachment 1 of the DPO).

Other Department-recommended changes to conditions include administrative corrections and substantive changes to support certificate holder implementation and Department review and enforcement.

PROCEDURAL HISTORY FOR RFA1

December 7, 2022 - the certificate holder submitted pRFA1. The Department reviewed pRFA1 to determine whether or not the request contained sufficient information for the Council to make findings.

December 15, 2023 - the Department issued Public Notice that pRFA1 had been received as required by OAR 345-027-0360(2).

January 27, 2023 - the Department notified the certificate holder that pRFA1 was incomplete and requested additional information.

June 8, 2023 - following receipt and review of the additional information requested, the Department notified the certificate holder that pRFA1 was complete.

June 14, 2023 - the Department posted the complete RFA1 to its project webpage and issued a Public Notice of a comment period on the complete RFA and DPO.

As of the date of this staff report, the Department has not received any written comments on RFA1 or the Draft Proposed Order on RFA1. Any comments that are received will be provided to the Council and certificate holder in advance of the July 17-19, 2023 hearings and EFSC Meeting.

SCOPE OF COUNCIL REVIEW (OAR 345-027-0375)

For amendments to the site certificate that would add area to the site boundary, the Scope of Council Review under OAR 345-027-0375 requires that Council determine whether the preponderance of evidence on the record supports the following conclusions:

1. That the portion of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards applicable to an original site certificate application; and
2. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Because the certificate holder is proposing to add additional road and transmission line route options to the site boundary, the findings of fact and conclusions of law in the DPO focus on whether the portions of the facility within the area added to the site boundary by RFA1 comply

with all laws and Council standards applicable to an original site certificate application. The Scope of Council's Review for RFA1 does not include findings of fact or conclusions of law that apply to the approved facility as described in the ASC and Final Order on ASC, including transmission line routes and related or supporting facilities.

STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF DRAFT PROPOSED ORDER

III.A. General Standard of Review: OAR 345-022-0000 p. 24-27

To issue an amended site certificate, the Council must determine that the evidence on the record, including information submitted to comply with Council-imposed site certificate conditions, demonstrates it is more probable than not that the certificate holder will comply with applicable standards for the areas added to the site boundary proposed in RFA1. The evaluation of requirements of the General Standard of Review (findings based on a preponderance of evidence on the record) are addressed in the recommended findings of facts and conclusions of law in the sections in the DPO, as summarized in this staff report. The facts and evidence in the record for RFA1, as well as the *Final Order on ASC*, are directly incorporated and or by reference in this order.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- General Standard of Review Condition 9, Site Certificate page 64: Monitoring/reporting under the Revegetation and Reclamation Plan is incorporated into the Noxious Weed Plan due to approved mitigation of temporary impacts treated as a permanent impact. Deleted to not conflict with overall reporting structures under the Revegetation and Reclamation Plan and Noxious Weed Plan (See also Recommended Amended Fish and Wildlife Habitat Condition 1);
- General Standard of Review Condition 11, Site Certificate page 23: Adds the proposed alternative routes to condition.

III.B. Organizational Expertise: OAR 345-022-0010 p. 28-31

Based on the recommended findings of fact in this order, there are not substantively new or different resources or impacts resulting from the proposed RFA1 site boundary additions that would necessitate a different level of organizational expertise as evaluated in the *Final Order on the ASC*. For these reasons, the Department recommends Council rely on its findings and conditions in the *Final Order on ASC*, which are summarized in DPO.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Organizational Expertise Condition 7, Site Certificate page 51: Clarifying/implementation language added.

III.C. Structural Standard: OAR 345-022-0020 p. 31-40

The analysis area for the Structural Standard includes the area within the proposed RFA1 site boundary additions, or approximately 1,036 acres extending across portions of Morrow, Umatilla, Union, Baker and Malheur counties. These areas would be located in the same vicinity as the approved site boundary; therefore, the seismic and non-seismic hazards evaluated in the *Final Order on the ASC* will not significantly differ for the proposed RFA1 site boundary additions. In the DPO, the Department recommends Council rely on its findings and conditions in the *Final Order on ASC*, which are incorporated and applied to the RFA1 analysis area as well as an analysis of the site-specific information in the areas proposed in RFA2.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Structural Standard Condition 1, Site Certificate page 52: Condition amendments included to support effective implementation and enforcement. Requiring that the geotechnical report identify potential blasting locations, in tabular format, is redundant and unnecessary given the requirements of the Blasting Plan.

III.D. Soil Protection: OAR 345-022-0020 p. 41-47

Of the 187 acres impacted, 129 acres would be restored and 58 acres would be permanently impacted by siting of facility infrastructure including 500 kV transmission towers and new and substantially modified access roads.

Table 2: Land Use and Cover Types within Proposed RFA1 Site Boundary Additions

County	Acres Within Analysis Area	High Value Farmland Soils within Analysis Area	Acres Impacted	Zone(s)	Land Cover Types
Morrow	140.6	73.8	23.8	Exclusive Farm Use	Agriculture; shrubland
Umatilla	71.3	59.4	11.1	Exclusive Farm Use; Grazing-Farm	Agriculture; forest/woodland; grassland; shrubland; riparian
Union	36.7	20.7	6.5	Exclusive Farm-Use; Agriculture-Grazing; Timber-Grazing	Forest/woodland; riparian; shrubland
Baker	648.3	479.1	120.6	Exclusive Farm Use	Forest/woodland; grassland; shrubland; riparian

Table 2: Land Use and Cover Types within Proposed RFA1 Site Boundary Additions

County	Acres Within Analysis Area	High Value Farmland Soils within Analysis Area	Acres Impacted	Zone(s)	Land Cover Types
Malheur	139.1	7.9	25.2	Exclusive Farm Use – Exclusive Range Use; Heavy Industrial	Agriculture; grassland; shrubland; open water

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Soil Protection Condition 1, Site Certificate page 25: Language of existing Soil Protection Condition 1 (Condition GEN-SP-01) could be interpreted to limit the ESCP to one version – a singular version finalized prior to construction. The existing condition also does not provide the Department the authority to require that changes be implemented in an ESCP. The Department must be given authority to require revisions to the ESCP because it is the ESCP that Council relies upon to ensure that erosion impacts are minimized, in compliance with the Soil Protection.
- Soil Protection Condition 2, Site Certificate page 25: Certificate holder requests that Council amend Soil Protection Condition 2 (Condition GEN-SP-02), to replace the SPCC Plan with a Hazardous Waste Management and Spill Response Plan (HWMSRP). Certificate holder agrees to include all prior representations of Final Order on ASC Attachment G-4 in the HWMSRP, and that the HWMSRP would continue to include the items detailed in the SPCC.
- Soil Protection Condition 4, Site Certificate page 25: The recommended condition amendment would only remove the process of final review and approval for elements of the plan for which neither the Department nor reviewing agencies have technical expertise or jurisdictional authority. The plan would still be required to be finalized prior to blasting activities; would be required to maintain all requirements described above; and would be required to be adhered to during all construction-related blasting activities.

III.E. Land Use: OAR 345-022-0030 p. 47-109

The proposed RFA1 site boundary additions would be located in the following zones:

- Morrow County: Exclusive Farm Use (EFU)
- Umatilla County: EFU; Grazing Farm (GF)
- Union County: EFU; Agricultural Grazing (A-2); Timber-Grazing (A-4)
- Baker County: EFU
- Malheur County: EFU-Exclusive Range Use (C-A1 and C-A2); Heavy Industrial (HI)

Under OAR 345-027-0375(3)(a), the proposed RFA1 site boundary additions must comply with the applicable substantive criteria from the comprehensive plans and land use regulations of these counties in effect on the date the preliminary request for amendment was submitted, December 7, 2022, the DPO recommends the Council find that the proposed RFA1 site boundary additions comply with the identified applicable substantive criteria and the directly applicable state statutes and rules and, therefore, complies with the Council's Land Use standard.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Land Use Condition 2, Site Certificate page 26-27: Adds reference to a RFA1 proposed route to MCZO

III.F. Protected Areas: OAR 345-022-0040 p. 110-148

Newly Identified Protected Areas in RFA1 Analysis Area:

- Glass Hill Preserve/ State Natural Area (SNA); Oregon Natural Areas Plan/Glass Hill; Union County, Oregon;
- The Boardman Research Natural Area (RNA); Oregon Natural Areas Plan; Morrow County, Oregon;
- Boardman/Willow Creek RNA (Boardman Area, COA 154); Morrow County, Oregon;
- Birch Creek Cove RNA Oregon Natural Areas Plan/Birch Creek Cove PRNA); Umatilla County, Oregon;
- Government Draw RNA (Establishment Record); Union County, Oregon;
- Payette River Wildlife Area; State Wildlife Refuge or Management Areas (Payette River Wildlife Management Area/Payette River WMA), Malheur County, Oregon;
- Indian Creek RNA, Lands Designated in Federal Management Plan (Oregon Natural Areas Plan/Indian Creek RNA); Union County, Oregon;
- Rebecca Sand Hill RNA/ Area of Critical Environmental Concern (ACEC) (Four Rivers Field Office Draft Resource Management Plan and Draft Environmental Impact Statement); Washington County, Idaho;

To update the visual impact analyses for the road and route alternatives proposed in RFA 1, the certificate holder followed similar visual impact assessment methodology, described in ASC Exhibit L, Attachment L-3, approved by Council in the Final Order on ASC, subsequently upheld by the Oregon Supreme Court. Because the vast majority of site boundary additions in RFA1 are roads, which do not have a vertical visual component associated with them, the visual impact assessment was further defined by proximity, i.e., foreground (<0.5 miles), middleground (0.5 to 5 miles), or background distances (> 5 miles).

Department recommends that the the design, construction and operation the facility in areas added to the site boundary proposed in RFA1 are not likely to result in significant adverse impacts from noise, increased traffic, water use, wastewater disposal, visual impacts of facility structures or plumes, and visual impacts from air emissions to any protected area under OAR 345-022-0040 as defined in OAR 345-001-0010(26).

No new or amended site certificate conditions recommended.

III.G. Retirement and Financial Assurance: OAR 345-022-0050 p. 148-152

Restoring the site to a useful, nonhazardous condition for the transmission line route alternatives and roads proposed in RFA1 would involve the same activities as Council approved in the Final Order on ASC. The Council previously reviewed the applicant's cost estimate and confirmed that the site restoration tasks, unit costs, labor rates, and cost estimate assumptions constitute a reasonable site restoration cost for the facility. Council previously found that \$140,779,000 million (rounded to nearest \$1,000 and in Q3 2016 dollars) was adequate to restore the site to a useful non-hazardous condition. The proposed transmission line routes, if selected, would increase the overall distance by 1.8 miles, which is than 0.1% change in the total length of the facility. Existing site certificate conditions require the certificate holder to adjust the bonding for construction and for operation based upon final design and adjusting to current dollars.

No new or amended site certificate conditions recommended.

III.H. Fish and Wildlife Habitat: OAR 345-022-0060 p. 152-165

Fish and wildlife surveys and protocols approved in the Final Order on ASC were implemented and followed for RFA1. Surveys included: terrestrial visual encounter (TVES); pygmy rabbit; Washington ground squirrel (WAGS); avian (for target species: great gray owl, flammulated owl, northern goshawk and American three-toed woodpecker); and noxious weeds.

Construction activities would result in approximately 170 acres of temporary impacts to Category 2, 3 and 5 habitats. Siting of facility infrastructure would result in approximately 51 acres of permanent impacts to Category 2, 3 and 5 habitats.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

Fish and Wildlife Habitat Condition 1, Site Certificate page 33: Because the certificate holder proposes to mitigate the temporal loss of habitat for all temporary impacts to Category 2, 3 and 5 by including equivalent acres within the permanent lands secured for long-term habitat mitigation, the Department recommends Council amend Fish and Wildlife Habitat Condition 1 to allow reduced monitoring if temporary impacts are otherwise mitigated through revegetation and compensatory mitigation. (See also revisions associated with General Standard of Review Condition 9, to be consistent with the mitigation representation).

Fish and Wildlife Condition 2, Site Certificate page 33-34: Condition currently requires that the Vegetation Management Plan be finalized in accordance with a formal reviewing agency process, prior to construction, and be implemented during construction and operations,

however, the Plan is actually final and does not need to be finalized. Further, the Vegetation Management Plan is applicable to operation and not to construction.

III.I. Threatened and Endangered Species: OAR 345-022-0070 p. 165-168

WAGS surveys were conducted April 4-11 and 19-27 and May 5-12 and 20-28, 2022 and included the area within a 1,000-foot buffer of suitable habitat. One WAGS colony was found within the ½-mile analysis area (the Little Juniper Canyon Alternative in Morrow County). WAGS are a state-listed endangered species. Council previously imposed T&E Species Condition 1 (Condition CON-TE-01) which precludes any ground-disturbing activities during construction to occur within WAGS-habitat. The condition also requires that if any WAGS are identified during the 3-year validity period of the surveys within areas of anticipated ground-disturbance, but after construction has commenced, that the certificate holder develop and avoidance and impact minimization plan.

T&E plant surveys were conducted at the Little Juniper Canyon Alternative and Durbin Quarry alternative. One population of Snake River goldenweed was found within the proposed RFA1 site boundary additions (the Durbin Quarry alternative). This population is located within and expands beyond a planned pulling and tensioning area. Council previously imposed T&E Species Condition 2 (Condition CON-TE-02) which precludes any ground-disturbing activities during construction from occurring within 33-feet of T&E plant species; or requires that protective matting be placed over the T&E plants if direct impacts are unavoidable.

No new or amended site certificate conditions recommended.

III.J. Scenic Resources: OAR 345-022-0080 p. 168-174

In preparation of RFA1, certificate holder reviewed the 47 applicable federal and local land use management plans or development codes within the 10-mile analysis area of the facility approved in the Final Order on ASC to determine if there had been updates to these plans that may identify new scenic resources. Based on this review of applicable land use plans, 23 of the 47 plans or codes have been updated or replaced by a new plan since the ASC. The review of these plan updates did not identify any new significant or important scenic resources and values.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Scenic Resources Condition 2, Site Certificate page 36: Certificate holder proposed minor condition amendment is recommended for Scenic Resources Condition 2, changing Natina finish to patina finish.

III.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090 p. 175-183

In preparation of RFA1, certificate holder evaluated and surveyed for cultural, historical, and archaeological resources with similar methods as was done for the ASC. Record searches were

done to identify previously recorded archaeological and historic sites for all site boundary additions proposed in RFA1, and that might be encountered during the field surveys. Phase 1 field surveys consists of completed surveys of an intensive pedestrian inventory of the entire direct analysis area to which the applicant had right of entry to access for surveys. Any additional surveys required to complete an inventory of 100 percent of the final selected route, as well as any necessary subsurface inventory or evaluation efforts, would be conducted during Phase 2. Phase 2 is anticipated to occur after the site certificate has been issued, but prior to construction, when site access has been secured for all properties as captured in Historic, Cultural, and Archaeological Resources Condition 2.

DPO Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1, provides the results from the surveys conducted in preparation of RFA1, which identifies if a resource is newly identified (not identified in the ASC) or if it was previously identified, in both cases, certificate holder provides an updated impact assessment based on the proximity of the road or route segment proposed in RFA1 to each resource and proposed or update mitigation measures.

During the review of the ASC, the Department compiled all the inventoried resources, proposed avoidance and mitigation measures associated with resource type, which include more specific mitigation requirements for Oregon Trail segments in each county into tables and added them to the Historic Properties Management Plan (HPMP) as Appendix A.1 *Inventory Tables with Management under OAR 345-022-0090*. The certificate holder adds the resources identified above to the HPMP Appendix A.1 Inventory Tables in RFA1 Attachment 7-14 in redline for convenient identification. Under applicable Historic, Cultural and Archeological Resources Condition 2, the Appendix A.1 Inventory Tables would be finalized and submitted based on final design and final routes selected and submitted to the Department prior to construction of the facility, or phase or segment of the facility.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Historic, Cultural and Archeological Resources Condition 2, Site Certificate page 37: changes reference from Final Order on ASC to Final Order on RFA1 for submission requirements of the HPMP.

III.L. Recreation: OAR 345-022-0100 p. 183-192

In preparation of RFA1, certificate holder evaluated online data, maps, reports, guidebooks, websites, and similar sources likely to provide site-specific information about recreational opportunities in the analysis area for the site boundary additions proposed in RFA1. Based on this assessment, certificate holder identified one new potential recreational opportunity, the Glass Hill Preserve/State Natural Heritage Area (SNHA). Because of the lack of public access (privately-owned lands), the lack of facilities on the site, as well as the conservation/research management intent of the Glass Hill Preserve, the Department recommends Council determine that the Glass Hill Preserve is not an important recreational opportunity.

The Department recommends the Council find that the design, construction and operation of the portions of the facility added to the site boundary in RFA1 are not likely to result in a significant adverse impact, including direct loss of recreational opportunities, potential visual, noise, and traffic-related impacts, to important recreational opportunities.

No new or amended site certificate conditions recommended.

III.M. Public Services: OAR 345-022-0110 p. 192-201

RFA1 does not propose any changes that would affect public service providers differently, that would introduce any new components or related or supporting facilities requiring new types of public service providers, or that would require changes to previously imposed conditions.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Public Services Condition 3, Site Certificate page 37-38: Certificate holder proposal to remove of timeframe of submission of Helicopter Use Plan prior to construction for flexibility.
- Public Services Condition 6, Site Certificate page 38-39: Minor administrative changes.
- Public Services Condition 7, Site Certificate page 39: Delete condition because of new Wildfire Prevention and Risk Mitigation Condition 1, which has the same requirements.

III.N. Wildfire Prevention and Risk Mitigation: OAR 345-022-0115 p. 201-211

When Council drafted and approved its Wildfire Mitigation standard under OAR 345-022-0115(2), the Council established that it may allow for the issuance of a site certificate without making the findings under section (1) of the rule (which has wildfire evaluation and wildfire mitigation plan requirements) if Council finds that the facility is subject to a Wildfire Mitigation Plan (WMP) that has been approved by the OPUC.

- April 28, 2022 – OPUC approved Idaho Power's 2022 Wildfire Mitigation Plan (dated Dec. 2021) on the condition that by June 28, 2022 the certificate holder file a Supplement to the 2022 WMP which must include the items identified by the OPUC in its order. Order No. 22-133.
- August 26, 2022 – OPUC approved the 2022 WMP Supplement. Order No. 22-312.

In the DPO, the Department recommends Council find that it does not need to make findings under OAR 345-022-0115(1) because the facility² is subject to a Wildfire Protection Plan that

² Department notes that under OAR 860-300-0001(1), Scope and Applicability of OPUC Rules for Wildfire Mitigation Plans, states “The rules in this division prescribe the filing requirements for risk-based Wildfire Mitigation Plans filed by a Public Utility that provides electric service in Oregon pursuant to ORS 757.005.” The certificate holder is a Public Utility that provides electric service in Oregon, and therefore must comply with the Wildfire Mitigation Plan (WMP) rules. Which under OAR 860-300-0020(1)(a)(B), Wildfire Mitigation Plans and

has been approved in compliance with OPUC rules, and the OPUC has approved the certificate holder's WMP. To support this recommendation, the DPO discusses the following:

- Procedural History for Wildfire Mitigation Plans (WMP) in Oregon and Certificate Holder WMP;
- Summary of *Final Order on ASC* Findings for WMP;
- Summary of Findings for RFA1 to Support OAR 345-022-0115(2);
- Results of Wildfire Risk Assessment for Facility and OPUC-Approved WMP;
- Other Applicable Conditions Related to Operational Fire Risk.

Recommended New Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Recommended Wildfire Prevention and Risk Mitigation Condition 1, Site Certificate page 39: Substantively requires the same information as the previously adopted Public Services Condition 7. Requires that the WMP, consistent with OAR 860-300-0020(1)(a)(A) and (B), evaluate fire-related risks for the entire facility in all five counties in Oregon, regardless of certificate holder service territory or ownership of the facility. It also ensures that the required mitigation measures included in the WMP apply to the entire facility in all five counties in Oregon.
- Recommended Wildfire Prevention and Risk Mitigation Condition 2, Site Certificate page 68: During operation, on an annual basis consistent with the annual report under General Standard of Review Condition 4, requires certificate holder to submit the most recent OPUC approved WMP and a copy of OPUC approval.

III.O. Waste Minimization: OAR 345-022-0120 p. 211-213

The proposed RFA1 site boundary additions will not result in substantive changes to the type or amount of solid waste and wastewater generated during facility construction and operation. Therefore, the Department recommends Council rely on its findings and conditions in the Final Order on ASC.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Waste Minimization Condition 1, Site Certificate page 40-41: Revisions for implementation.

III.P. Need for a Facility: OAR 345-023-0005 p. 213-217

In the Final Order on ASC, the certificate holder and the Council agreed that the certificate holder demonstrated that the facility was needed under the least-cost plan rule (OAR 345-023-

Updates, a WMP must identify areas that are subject to a heightened risk of wildfire within the service territory of the Public Utility, *and outside the service territory of the Public Utility but within the Public Utility's right-of-way for generation and transmission assets*. [Emphasis added] RFA1 Section 7.1.10 and in the 2022 WMP Section 3.2.1 and Section 3.2.2.1, certificate holder states that it included the facility, including the areas added to the site boundary proposed in RFA1, in its wildfire modeling (with a 1.2-mile buffer - 0.62 miles on both sides of ROW) and that the WMP applies to the facility.

0020) and the system reliability rule for electric transmission lines (OAR 345-023-0030). Certificate holder maintains, and the Department recommends Council concur that the proposed site boundary additions proposed in RFA1 would not alter the findings Council relied upon in the Final Order on ASC for the Need Standard. The DPO provides a summary of findings in the Final Order on ASC.

No Site Certificate Conditions under the Need Standard.

III.Q. Siting Standards for Transmission Lines: OAR 345-024-0090 p. 217-218

The proposed RFA1 site boundary additions do not alter or change anything related to the previously approved facility components, other than potential final location. The changes proposed in RFA1 would therefore not impact the Council's findings of fact and conclusions of law as presented in the Final Order on the ASC, the DPO provides a summary of previously evaluated facts. The Department recommends Council continue to find that the facility, with proposed RFA1 site boundary additions, satisfies the requirements of this standard, and existing conditions would apply to the proposed transmission line routes.

No new or amended site certificate conditions recommended.

III.R.1. Noise Control Regulations: OAR 340-035-0035 p. 219-235

Council has the authority to interpret and implement other state agency and Commission rules and statutes that are relevant to the siting of an energy facility,³ including noise rules adopted by the Environmental Quality Commission and previously administered by the Department of Environmental Quality (DEQ).^{4, 5}

Operational noise generated by a new industrial or commercial noise source to be located on a previously unused site must comply with two standards: the "maximum allowable noise standard" and the "ambient antidegradation standard." Under the ambient antidegradation standard, facility-generated noise must not increase the ambient hourly L10 or L50 noise levels at an appropriate measurement point by more than 10 dBA. For the proposed site boundary transmission line route additions that are the subject of RFA1, the certificate holder used these

³ See ORS 469.310 (stating that the legislative policy behind EFSC was to establish "a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state") and ORS 469.401(3) (giving EFSC the authority to bind other state agencies as to the approval of a facility).

⁴ The Environmental Quality Commission and the DEQ suspended their own administration of the noise program because in 1991 the state legislature withdrew all funding for implementing and administering the program. A July 2003 DEQ Management Directive provides information on DEQ's former Noise Control Program and how DEQ staff should respond to noise inquiries and complaints. The Directive states (among other items) that the Energy Facility Siting Council (EFSC), under the Department of Energy, is authorized to approve the siting of large energy facilities in the State and that EFSC staff review applications to ensure that proposed facilities meet the State noise regulations.

⁵ "We (the Oregon Supreme Court) conclude that EFSC had the authority to grant (1) an exception to the noise standards under OAR 340-035-0035(6)(a), and (2) a variance under OAR 340-035-0100 and ORS 467.060." B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, pp 805-807.

same methods, comparing baseline ambient sound levels to the modeled predicted future sound levels at potentially affected Noise Sensitive Receptors (NSRs).

The evaluation in RFA1 was done for two NSRs, 3 and 5010, which fell within the analysis area of the one-half mile analysis area and out to a mile in an area with a low (26 dBA ambient noise level). The maximum modeled sound level would be 37 dBA, therefore, noise would not exceed the maximum allowable noise standard. The projected increase at NSR 3 would be 8 dBA, less than 10 dBA, which is allowed under the ambient antidegradation standard. The location of the True Blue Gulch Alternative route is 1,528 feet further away from NSR 5010 than the previously approved route, which would reduce the increase in the ambient baseline sound levels under foul weather conditions from 17 dBA to a 13 dBA increase in the ambient baseline sound levels.

The DPO provides a summary of the facts, findings, and conditions provided in the Final Order on ASC for the Council-approved exception and variance to the ambient antidegradation standard, which continues to apply to the facility and proposed site boundary additions in RFA1.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Noise Control Condition 1, Site Certificate page 42-43: Implementation language added.
- Noise Control Condition 5, Site Certificate page 69: Noise Control Condition 5 as approved in Final Order on ASC was not the version that Council approved in its Contested Case Order (CCO). Revisions to Conditions are to make the Condition consistent with the CCO, as agreed upon from the contested case proceeding.

III.R.2. Removal-Fill OAR 141-085-0500 through 141-085-0785 p. 235-239

Wetlands and waters of the state (WOS) were evaluated using the same desktop and field wetland delineation methodologies as done for the ASC. The estimated impact to field surveyed/delineated wetland features includes 0.06 acres of total permanent impacts and 0.04 acres of total temporary impacts. The estimated impact to field surveyed/delineated non-wetland WOS includes 0.105 acres of total permanent impacts and 0.386 acres of total temporary impacts. The combined total permanent and temporary impacts to wetlands and waters of the state is 0.591 acres.

Council previously found that a removal-fill permit is necessary for the construction and operation of the facility and imposed several site certificate conditions to implement the requirements under the Department of State Lands (DSLs) rules which govern wetland delineations, removal-fill permits and wetland mitigation. Department recommends several revisions to these conditions for clarity and implementation, as summarized below.

Recommended Amended and Deleted Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Removal Fill Condition 3, Site Certificate page 47-48: The existing condition requires that, prior to construction, the CWNWMP be finalized. However, for previously surveyed areas, concurred by DSL, the CWNWMP is final. The components of the CWNWMP that need to be finalized are those that apply to unsurveyed areas. The Department recommends amending the Condition for clarity.
- Amend Removal Fill Condition 6 and remove Removal Fill Condition 5, Site Certificate page 48: Council previously adopted Removal-Fill Permit Condition 5, specifying that the conditions set forth in the removal-fill permit are conditions of approval in the site certificate. Additionally, Council imposed Removal-Fill Condition 6 to ensure that the removal-fill permit is updated prior to construction of the facility and any impacts to wetlands or WOS. However, Removal-Fill Condition 5 and 6 contained redundant requirements to comply with the conditions set out in the removal fill permit. To reduce redundancy and to clarify that the removal fill permit conditions apply to pre-construction, construction, and operation of the facility, including the proposed RFA1 site boundary additions, the Department recommends Council remove Removal-Fill Condition 5 and amend Removal-Fill Condition 6.

III.R.3. Water Rights p. 239-240

In the Final Order on the ASC, the Council found that the certificate holder had established that it can obtain adequate water for construction and operation of the facility from municipal water service providers in the vicinity of the facility, and would not need a groundwater permit, surface water permit, or water right transfer. The scope and extent of construction activities associated with facility components located within the proposed RFA1 site boundary additions would not change the volume of water needed for construction or require a water permit.

No Water Right Site Certificate Conditions imposed in Final Order on ASC.

III.R.4. Fish Passage: OAR 635-412-0035 p. 241

The proposed RFA1 site boundary additions will not result in stream crossings where new artificial obstructions, or substantial modifications to existing obstructions, on any waters would occur.

Council previously imposed Fish Passage Condition 1 (GEN-FP-01) requiring, in part, that the certificate holder confer with ODFW and seek concurrence on the evaluation of crossings and fish presence to ensure that if construction is required for a crossing of any fish-bearing stream, existing or historic, where review and approval has not yet occurred, that the approach review of and approval of fish passage designs is completed prior to construction.

No new or amended site certificate conditions recommended.

RECOMMENDED COUNCIL ACTION

Based on the recommended findings of fact and conclusions of law included in the DPO, under OAR 345-027-0375, the Department recommends Council find that the preponderance of evidence on the record, including RFA1 and the record of the *Final Order on ASC* which includes the record of the contested case on Proposed Order on ASC, supports the following conclusions:

1. The proposed RFA1 site boundary additions comply with the applicable substantive criteria under the Council's Land Use standard, as described in OAR 345-022-0030, from the date RFA1 was submitted.
2. The proposed RFA1 site boundary additions comply with the requirements of the Energy Facility Siting Statutes ORS 469.300 to 469.520.
3. The proposed RFA1 site boundary additions comply with all applicable standards adopted by Council pursuant to ORS 469.501.
4. The proposed RFA1 site boundary additions comply with all other Oregon statutes and administrative rules.
5. Taking into account the proposed RFA1 site boundary additions, the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Accordingly, the Department recommends Council find that the facility, with the proposed changes, complies with the General Standard of Review OAR 345-022-0000 and OAR 345-027-0375, that the Council approve Request for Amendment 1 of the Site Certificate, and issue the first Amended Site Certificate.

ATTACHMENTS

Attachment 1: [Draft Proposed Order on Request for Site Certificate Amendment 1](#) [hyperlink]

Attachment 2: Comments Received on Draft Proposed Order on Request for Site Certificate Amendment 1*(*any comments received after the date of this staff report will be provided in Supplemental Council Packet Materials prior to the July 19, 2023 meeting)

**BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON**

In the Matter of Request for Amendment 1 of the
Site Certificate for the Boardman to Hemingway
Transmission Line

)
)
) PROPOSED ORDER
)

August 7, 2023

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ATTACHMENTS:

- Attachment 1: Draft First Amended Site Certificate (red-line)
- Attachment 2: DPO Comments
- Attachment 3: Certificate Holder Responses to DPO Comments
- Attachment B-5: Road Classification Guide and Access Control Plan Supplement
- Attachment G-4: Draft Amended Hazardous Waste Management and Spill Response Plan
- Attachment G-5: Draft Amended Framework Blasting Plan
- Attachment P1-4: Amended Vegetation Plan
- Attachment P1-6: Draft Amended Fish and Wildlife Habitat Mitigation Plan
- Attachment 7-16: Wildfire Mitigation Plan

ABBREVIATIONS AND ACRONYMS

ACEC	Area of Critical Environmental Concern
ASC	Application for Site Certificate
BCZSO	Baker County Zoning and Subdivision Ordinance
BLM	Bureau of Land Management
CHZO	City of Huntington Zoning Ordinance
CI	Commercial Industrial
CR	Commercial Residential
Council or EFSC	Energy Facility Siting Council
CTUIR	Confederated Tribes of the Umatilla Indian Reservation
dBA	A-weighted decibels
EFU	Exclusive Farm Use
ESH	Essential Salmonid Habitat
HAC	Historical, Archeological or Cultural
HPMP	Historic Properties Management Plan
IPC; certificate holder	Idaho Power Company
JPA	Joint Permit Application
kV	kilovolt
LiDAR	light detection and ranging
MCC	Malheur County Code
MCCP	Morrow County Comprehensive Plan
MCZO	Morrow County Zoning Ordinance
NED	National Elevation Dataset
NEPA	National Environmental Policy Act
NHD	National Hydrography Dataset
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NSR	noise-sensitive receptor
NWI	National Wetlands Inventory
NWSTF Boardman	Naval Weapons Systems Training Facility – Boardman
OAR	Oregon Administrative Rules
ODEQ	Oregon Department of Environmental Quality
ODFW	Oregon Department of Fish and Wildlife
ODOE	Oregon Department of Energy
ODSL	Oregon Department of State Lands
ORS	Oregon Revised Statutes
PA	Programmatic Agreement
Project; B2H	Boardman to Hemingway Transmission Line Project
RFA1	Request for Amendment 1
RSA	Rural Service Area
SHPO	State Historic Preservation Office
STATSGO	State Soil Geographic Database
UCCP	Umatilla County Comprehensive Plan

ABBREVIATIONS AND ACRONYMS

UCDO	Umatilla County Development Ordinance
UCZPSO	Union County Zoning, Partition, and Subdivision Ordinance
USDA	U.S. Department of Agriculture
USFS	U.S. Department of Agriculture, Forest Service
USGS	U.S. Geological Survey
WAGS	Washington ground squirrel

1 **I. INTRODUCTION**
2

3 On June 8, 2023 Idaho Power Company (certificate holder) filed Request for Amendment 1 of
4 the Boardman to Hemingway Transmission Line Site Certificate (amendment request or RFA1).
5 The changes proposed in RFA1 include adding area (approximately 1,036 acres) to the site
6 boundary to allow for adjustments of three transmission line route segments (approximately
7 8.8 miles total) and road locations (approximately 45.9 miles) (referred to as “proposed RFA1
8 site boundary additions”). The amendment request also seeks Council approval to amend
9 language of site certificate conditions.

10
11 For amendments to the site certificate that include site boundary expansion and other changes,
12 such as new or amended conditions, ~~would add area to the site boundary,~~ the Scope of Council
13 Review under OAR 345-027-0375 requires that Council determine whether the preponderance
14 of evidence on the record supports the following conclusions:
15

- 16 1. That the portion of the facility within the area added to the site boundary by the
17 amendment complies with all laws and Council standards applicable to an original site
18 certificate application; ~~and~~
- 19 2. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate;
20 and,
- 21 3. The facility, with proposed RFA1 changes, complies with the applicable laws or Council
22 standards that protect a resource or interest that could be affected by the proposed RFA1
23 changes.

24
25 In accordance with OAR 345-027-0365, the Oregon Department of Energy (Department), as
26 staff to the Council, issues this Proposed Order ~~Draft Proposed Order (DPO)~~ recommending
27 approval of RFA1 subject to the existing and recommended amended site certificate conditions
28 set forth in this order. This order, and the analysis and recommendations contained therein do
29 not constitute a final determination by the Council.
30

31 **I.A. SITE CERTIFICATE PROCEDURAL HISTORY**
32

33 The Council issued the Final Order on the Application for Site Certificate (*Final Order on ASC*)
34 and granted issuance of the Boardman to Hemingway Transmission Line Site Certificate on
35 September 27, 2022. This is the certificate holder’s first request for an amendment to the Site
36 Certificate.
37

38 **I.B. APPROVED FACILITY DESCRIPTION**
39

40 The approved not constructed facility includes approximately 300 miles of electric transmission
41 line, with approximately 272.8 miles located in Oregon and 23.8 miles in Idaho. The approved
42 facility, its related or supporting facilities, and location are described further below.
43

1 **I.B.1. Facility Location, Site Boundary and Micrositing Transmission**
2 **Line Corridors**
3

4 The facility traverses five counties in Oregon including Morrow, Umatilla, Union, Baker and
5 Malheur; and two cities including North Powder and Huntington. The location of the
6 approved site boundary is presented in Figure 1, *Approved Route Site Boundary and Vicinity*
7 and Figure 2, *Approved Alternative Route Site Boundary and Vicinity* below.
8

9 The approved site boundary contains approximately 23,041 acres. For the 500-kV
10 transmission line, the site boundary is a 500-foot-wide area within which the transmission
11 line, all transmission structures, and communication stations are approved to be located.¹
12 The site boundary for the remaining facility features varies, based on the type of feature
13 and use. The site boundary for the approved Longhorn Station is approximately 190 acres.
14 The site boundary for access roads is either 100 or 200-feet in width, depending on the
15 nature of the road.
16

17 The site boundary is equivalent to a micrositing transmission line corridor. A
18 micrositing/transmission line corridor is a continuous area of land not to exceed 0.5-mile in
19 width within which construction of facility components may occur, subject to site certificate
20 conditions.² The Council permits final siting flexibility within the approved micrositing
21 transmission corridor because the certificate holder has demonstrated that requirements of all
22 applicable standards have been satisfied by adequately evaluating the entire corridor and
23 location of facility components anywhere within the corridor/site boundary.
24

25 **I.B.2. Energy Facility Description**
26

27 The certificate holder is approved to construct, operate and retire the following major
28 components:

- 29 • Transmission Lines: The approved route consists of an approximately 270.8-mile-long
30 single-circuit 500-kV electric transmission line, removal of 12 miles of existing 69-kV
31 transmission line, rebuilding of 0.9 mile of a 230-kV transmission line, and rebuilding of
32 1.1 miles of an existing 138-kV transmission line into a new ROW. Four approved
33 alternative routes represent approximately 33.3 miles of transmission line.
34
- 35 • Longhorn Station: A 20-acre switching station is approved to be located near the Port of
36 Morrow, Oregon. The switching station provides a combination of switching, protection,
37 and control equipment arranged to provide circuit protection and system switching
38 flexibility for the transfer of electric power; it does not incorporate step-down or step-
39 up voltage equipment. The station connects the transmission line to other 500-kV
40 transmission lines and the Pacific Northwest power market.
41

¹ B2HAPPDoc3-3 ASC 02a_Exhibit_B_Project Description_ASC 2018-09-28. Section 3.2.2.3 and 3.5.2.

² OAR 345-001-0010(7) and (32)

- Communication Stations: Ten communication station sites (and two alternative communication stations sites) each consisting of a communication shelter and related facilities. Each communication station site is less than 1/4-acre in size.

I.B.3. Related or Supported Facilities Description

ORS 469.300(14) defines “facility” as an “energy facility together with any related or supporting facilities.” The below sections describe the approved related or supporting facilities.

Access Roads

The facility includes permanent access roads for the approved route, including 206.3 miles of new roads and 223.2 miles of existing roads requiring substantial modification. The approved alternative routes includes 30.2 miles of new roads and 22.7 miles of existing roads requiring substantial modification. Access roads include both new roads and existing roads requiring substantial modification. Existing roads used for construction and operation of the facility but which would not require substantial modification are not “related or supporting facilities” and, therefore are not included in the site boundary.³ Table 1, *Summary of Access Road Classifications* provides a summary of the road descriptions previously approved by Council. The Council-approved access road classification and modifications are described further in Attachment B-5, Road Classification Guide and Access Control Plan, attached to this order.

Table 1: Summary of Access Road Classifications

Access Road Classification		Site Boundary	Construction Disturbance	Operations Disturbance	Road Prism or Profile Changes	Extent of Work
New Roads	Primitive	200 feet	16 feet	10 feet	Yes	Clearing of vegetation or obstructions. Create roads by direct vehicle travel.
	Bladed	200 feet	16–35 feet	14 feet	Yes	Clearing of vegetation or obstructions. Create roads by cutting/filling existing terrain.

³ OAR 345-001-0010(50) states that “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.”

Table 1: Summary of Access Road Classifications

Access Road Classification		Site Boundary	Construction Disturbance	Operations Disturbance	Road Prism or Profile Changes	Extent of Work
Existing Roads - Substantial Modification	Substantial Modification, 21-70% Improved	100 feet	16 feet	14 feet	Yes	Reconstruct portions of existing road to improve road function. Possible road prism widening, profile adjustments, horizontal curve adjustments, or material placement.
	Substantial Modification, 71-100% Improved	100 feet	16–30 feet	14 feet	Yes	Reconstruct portions of existing road to improve road function. Possible road prism widening, profile adjustments, horizontal curve adjustments, or material placement.
Existing Roads – No Substantial Modification	No Substantial Modification, 0-20% Improved	NA ¹	NA ¹	NA ¹	No	Repair of existing road to maintain original road function. No betterment of existing road function or design.

¹ Existing roads with no substantial modifications are not included in the Site Boundary and do not have an operation or construction disturbance width assigned to them.
Source: Table PF-8: Summary of Access Road Classifications from Final Order (B2HAPPDoc31 *Final Order on ASC* and Attachment 2022-09-27, page 77; B2HAPPDoc3-3 ASC 02a_ Exhibit_B_ Project Description_ASC 2018-09-28, Table B-12.

1
2
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11
12

New Roads

For purposes of describing the disturbance width, new roads are classified as either “primitive” or “bladed.” The approved site boundary for all new roads is 200 feet wide (100 feet on either side of the centerline). The typical construction disturbance for primitive roads would be 16 feet and the operational width would be maintained at 10 feet. For bladed roads, the typical construction disturbance would be 16 feet wide, but could be as wide as 35 feet as dictated by terrain and soil conditions, and the operational width for bladed roads is 14 feet.

Existing Roads with No Substantial Modification

1 Road maintenance activities will be limited to 20 percent or less of the road surface area and
2 may include repair of the road prism to (i) produce a stable operating surface, (ii) ensure proper
3 drainage and erosion control, and (iii) establish horizontal clearance, however will not include
4 (i) increasing the width of the existing road prism, (ii) change the existing road alignment, (iii)
5 use materials inconsistent with the existing road surface, and/or (iv) change the existing road
6 profile.

7
8 *Existing Roads Requiring Substantial Modification*
9

10 If improvements to an existing road would involve one or more of the following activities, the
11 road segment is classified as requiring substantial improvements:

- 12
13 1. increasing the width of the existing road prism;
14 2. changing the existing road alignment;
15 3. using materials inconsistent with the existing road surface;
16 4. changing the existing road profile; or
17 5. involving repairs to more than 20 percent of the road surface area defined by road
18 prism width and longitudinal distance over a defined road segment.
19

20 Typical construction disturbance for existing roads requiring substantial modification would be
21 16 feet wide, but could be up to 30 feet wide when road modification exceeds 70 percent. The
22 operational width would be 14 feet. The approved site boundary for a substantially modified
23 existing road is 100 feet wide (50 feet on either side of the centerline.)
24

25 Following construction, any new roads developed for access to multi-use areas would be
26 removed and restored to preconstruction conditions, unless the landowner requests otherwise.
27 Roads developed for pulling and tensioning sites would be permanent because they would also
28 provide access to structures for operations and maintenance.
29

30 *Temporary Multi-Use Areas*
31

32 Temporary multi-use areas would be necessary approximately every 15 miles along the right of
33 way (ROW). The approved multi-use areas (MUAs) are temporary construction areas that would
34 serve as field offices; reporting locations for workers; parking space for vehicles and equipment;
35 and sites for material delivery and storage, fabrication assembly of towers, cross arms and
36 other hardware, concrete batch plants, and stations for equipment maintenance. Each MUA
37 would be approximately 30 acres in size. After construction is complete, MUAs would be
38 restored ~~to in a manner compatible with the land use and zone at the time of restoration, pre-~~
39 ~~construction conditions~~ in accordance with General Standard of Review Condition 9.
40

41 *Temporary Pulling and Tensioning Sites and Light-Duty Fly Yards*
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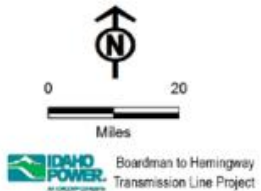
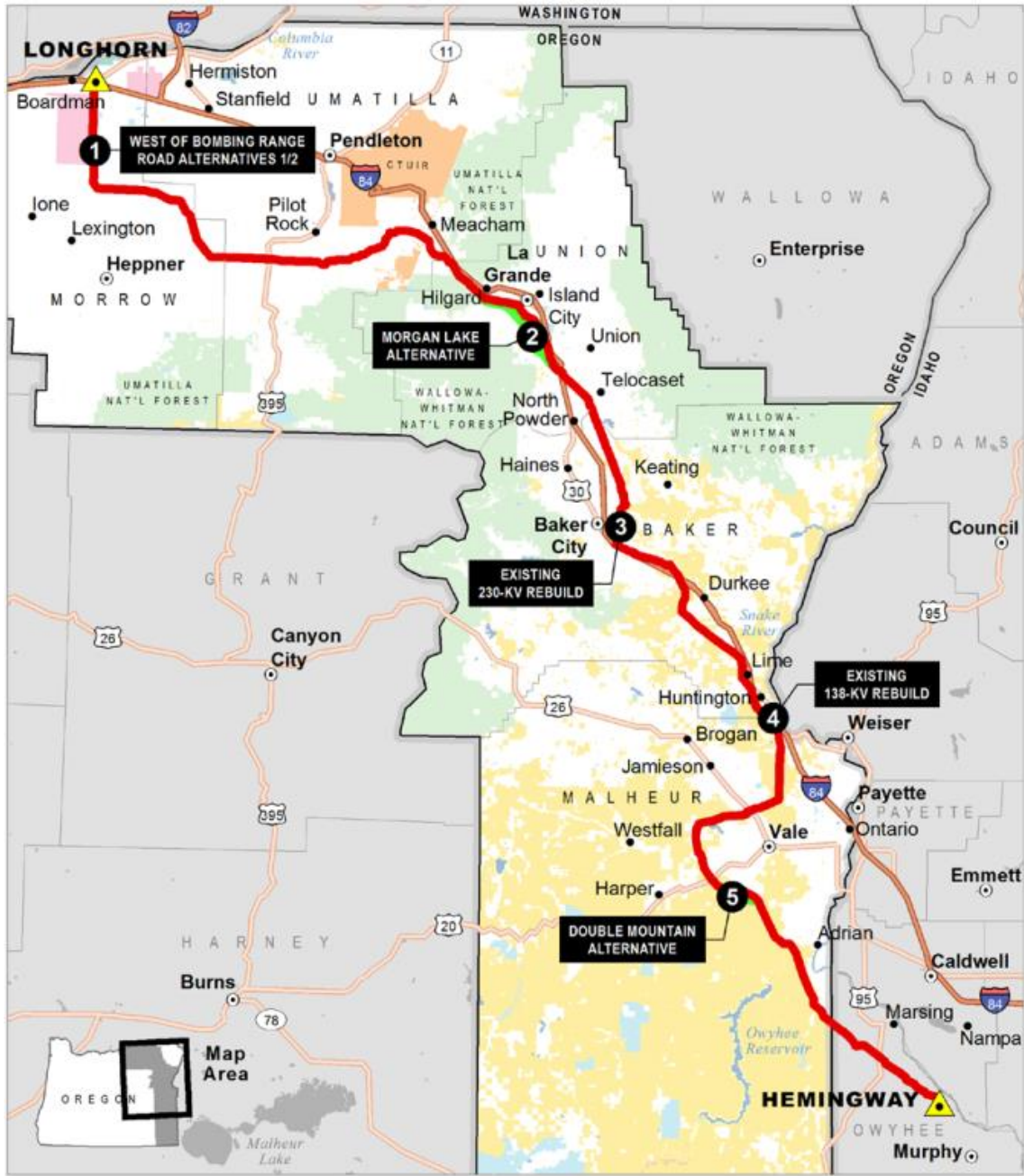
43 Construction of the transmission line would require 299 approved pulling and tensioning sites.
44 Pulling and tensioning sites would be required approximately every 1.5 to two miles along the

1 ROW and at angle points greater than 30 degrees and would require approximately five acres at
2 each end of the wire section to accommodate required equipment. Equipment at pulling and
3 tensioning sites would include tractors and trailers with spooled reels that hold the conductors
4 and trucks with the tensioning equipment.

5

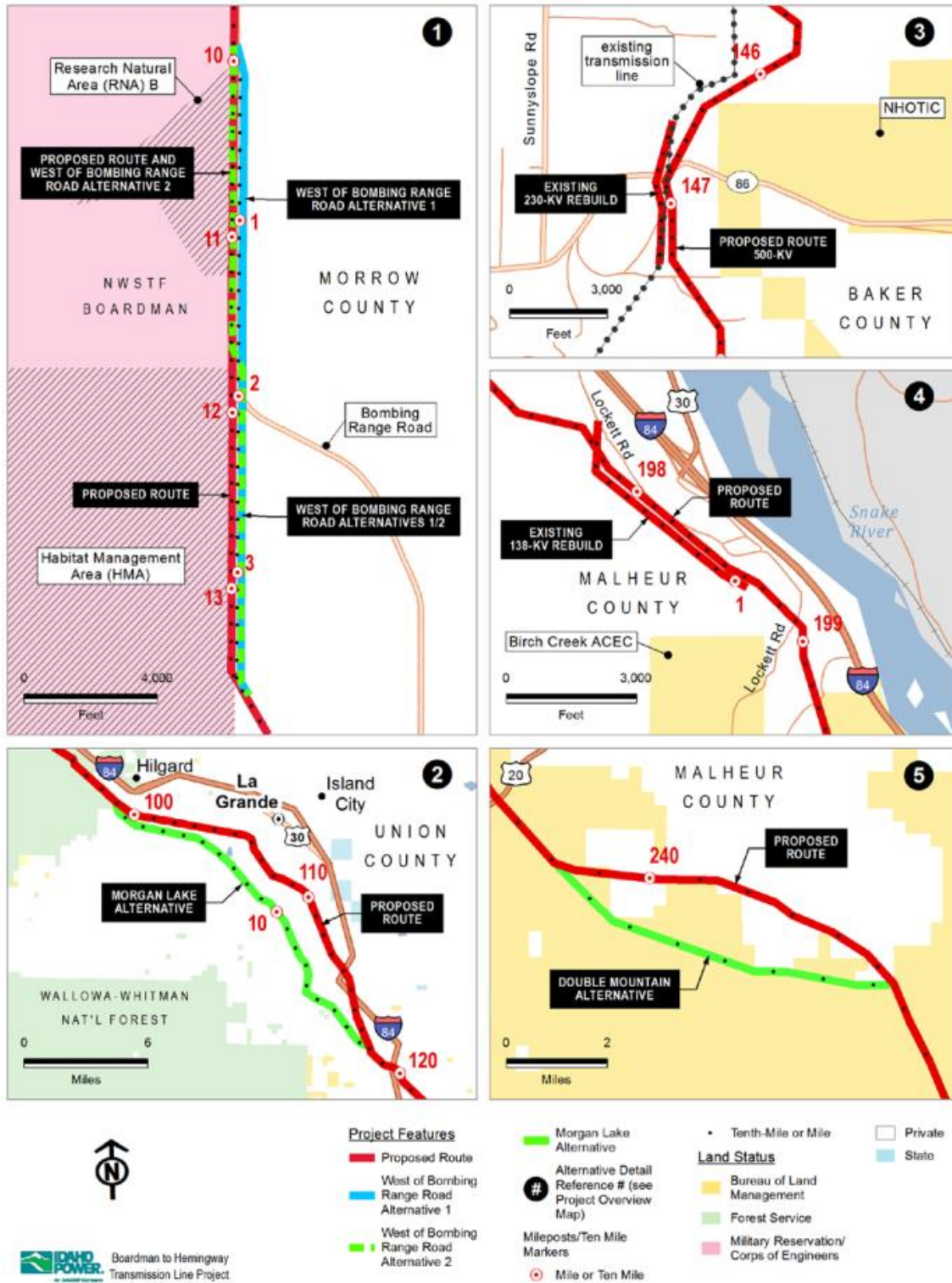
6 Four pulling and tensioning sites are approved to include light-duty fly yards. The counties in
7 which the light-duty fly yards are approved to be located are Umatilla, Baker and Malheur
8 counties. All of the equipment and activities that would occur at an MUA could also occur at a
9 light-duty fly yard, except that oil, gas and explosive storage would not occur and no batch
10 plants would be located at the light-duty fly yards within the pulling and tensioning sites. The
11 light-duty fly yards would be approximately five-acre sites spaced approximately 15 miles apart.

Figure 1: Approved Route Site Boundary and Vicinity



- | Project Features | | Land Status | |
|---|---|---|--|
| — | Proposed Route | ■ | Bureau of Land Management |
| — | Alternative | ■ | Bureau of Reclamation |
| ▲ | Stations | ■ | Fish and Wildlife Service |
| # | Alternative Detail Reference # (see Detail Map) | ■ | Forest Service |
| | | ■ | Indian Reservation |
| | | ■ | Military Reservation/ Corps of Engineers |
| | | ■ | Other Federal |
| | | ■ | Private |
| | | ■ | State |

Figure 2: Approved Alternative Route Site Boundary and Vicinity



I.B.4. Facility Development: Construction, Operation and Retirement Activities

I.B.5.a Construction

Construction activities could occur simultaneously, by segment or phase. Construction activities will generally include the following phases:

Phase I - Civil construction

- Activities along the transmission line will involve clearing the corridor and constructing access roads and, if applicable, harvestable timber will be cleared then hauled off.

Phase II – Foundation Construction

- Foundations will be constructed at each structure site to support the steel towers. Track mounted drills and excavators will be mobilized to each structure site to excavate the site and concrete trucks will then deliver concrete to the sites to construct the foundations.

Phase III – Structure Erection

- Steel lattice towers will be assembled at each site and erected on the foundations. Material will be delivered via flatbed trucks to each structure site and unloaded with forklifts and cranes where it will be assembled in pieces in the work area around the foundations.

Phase IV – Conductor Pulling/Tensioning

- Conductor will be pulled along the corridor and through the structures via helicopters while large man lift trucks provide work crews access to each structure.⁴

Construction will include approximately 437 workers and crews for the following activities: switching station construction, ROW clearing, roads/pad grading, foundations, tower lacing, tower setting, wire stringing, restoration, blasting, materials management, mechanic & equipment management, refueling, dust control, construction inspection, materials testing, environmental compliance, and surveyors.

Construction traffic will include:

- Up to 486 one-way worker trips per day
- Up to 620 one-way light construction trips per day
- Up to 188 one-way heavy construction trips per day

I.B.5.b Operations and Maintenance

Operations and maintenance (O&M) activities include routine inspection and maintenance of the transmission line, in compliance with the Transmission Maintenance and Inspection Plan (TMIP) (see Organizational Expertise Condition 1; Condition OPR-OE-01).

⁴ B2HAPPDoc13 DPO IPC Responses to Select DPO Comments Rec'd by 2019-11-07; B2HAPP DPO IPC Responses - City of La Grande comments 2019-10-09.

In accordance with the TMIP, three types of line maintenance patrols will be conducted: routine line patrols/inspections, unscheduled emergency line patrols, and aerial vegetation patrols. The routine line patrols include a detailed visual inspection of the entire line conducted at least once per year.

Emergency line patrols will be performed in response to any unexplained system outage or interruption, or whenever requested by a dispatcher, to identify major structural failures or issues.

Aerial vegetation patrols will be conducted by a transmission utility arborist to identify and manage vegetation encroachments that threaten the transmission lines.

Transmission Patrolmen will patrol and inspect the transmission lines at a minimum once a year to identify any transmission defects and any vegetation hazards that may develop between vegetation clearing cycles.

The TMIP requires that the certificate holder complete comprehensive 10-year maintenance inspection at least every 10-years.

O&M activities will also include short- and long-term monitoring and minimization measures for noxious weeds, restoration/reclamation, revegetation and habitat enhancement, as required by site certificate conditions provided in Section 5.0 of the recommended amended site certificate (Attachment 1 of this order).

I.B.5.c Retirement/Decommissioning

The certificate holder shall retire or decommission the facility based on a retirement plan to be approved by the Council in accordance with the requirement of OAR 345-027-0110, consistent with the *Final Order on ASC*, and applicable conditions provided in Section 5.6 of the recommended amended site certificate.

1 **II. AMENDMENT PROCESS**

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3 With some exceptions, an amendment to a site certificate is required under OAR 345-027-
4 0350(4) for any change in the design, construct, or operate a facility in a manner substantially
5 different from that described in the site certificate, if the proposed change: (1) could result in a
6 significant adverse impact that the Council has not addressed in an earlier order and the impact
7 affects a resource or interest protected by an applicable law or Council standard; (2) could
8 impair the certificate holder’s ability to comply with a site certificate condition; or (3) could
9 require a new condition or a change to a condition in the site certificate (“three could”).⁵ As
10 described below, the changes proposed in RFA1 require review through the site certificate
11 amendment process because the changes trigger the “three could” under OAR 345-027-
12 0350(4).
13

14 **II.A. SCOPE OF COUNCIL REVIEW**

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16 For amendments to the site certificate that include site boundary expansion and other changes,
17 such as new or amended conditions, would add area to the site boundary, the Scope of Council
18 Review under OAR 345-027-0375 requires that Council determine whether the preponderance
19 of evidence on the record supports the following conclusions:
20

- 21 4. That the portion of the facility within the area added to the site boundary by the
22 amendment complies with all laws and Council standards applicable to an original site
23 certificate application; ~~and~~
24 5. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate;
25 and,
26 6. The facility, with proposed RFA1 changes, complies with the applicable laws or Council
27 standards that protect a resource or interest that could be affected by the proposed RFA1
28 changes.
29

30 ~~The~~ ~~Because the~~ certificate holder ~~is proposing~~ proposes to add additional road and
31 transmission line route options to the site boundary; and, modify the language of previously
32 imposed conditions. Therefore, the findings of fact and conclusions of law in this order focus on
33 whether the portions of the facility within the area added to the site boundary by RFA1 comply
34 with all laws and Council standards applicable to an original site certificate application ((1
35 above) and whether the changes to site certificate condition language impact the ability of the
36 facility, with proposed RFA1 changes, to comply with applicable laws and standards ((3) above).
37 The Scope of Council’s Review for RFA1 does not include findings of fact or conclusions of law
38 that apply to the approved facility as described in the ASC and *Final Order on ASC*, including
39 previously approved transmission line routes and related or supporting facilities that are not
40 impacted by RFA1.
41

⁵ OAR 345-027-0350(4).

1 **II.B. REQUESTED AMENDMENT**

2

3 RFA1 seeks Council approval to (a) add alternative route corridors for the transmission line on
 4 three properties based to accommodate requests by landowners to re-locate the facility on
 5 their land to minimize impacts to landowners while being able to meet design criteria; (b) add
 6 and refine of the location of roads resulting from additional design and engineering review
 7 associated with the approved and proposed RFA1 route alternatives; (c) amend language of site
 8 certificate conditions to support implementation. Proposed RFA1 site boundary additions
 9 include approximately 8.8 miles of 500-kV transmission line alternatives, and approximately
 10 45.9 miles of access road changes associated with the approved route and routes in RFA1. Table
 11 2: *RFA1 Proposed Alternative Route and Access Road Additions*, below details the location,
 12 length, acreage impacts and reasoning for the alternative in RFA1. In addition, Section II.B.2,
 13 below, describes the proposed changes by county.

Table 2: RFA1 Proposed Alternative Route and Access Road Additions⁶

Proposed Site Boundary Additions	County	Length of Addition – Transmission Line (miles)	Length of Addition – Access Road (miles)	Area of Addition (acres)	Description of Site Boundary Addition
Little Juniper Canyon Transmission Line Alternative ¹	Morrow	1.4	1.4	78.7	Shifted transmission line to the west to minimize impacts to proposed solar facility
Access Road Changes in Morrow County	Morrow	NA	4.2	61.9	Road design changes
Access Road Changes in Umatilla County	Umatilla	NA	3.4	71.3	Road design changes
Access Road Changes in Union County	Union	NA	1.8	36.7	Road design changes
True Blue Gulch Transmission Line Alternative ²	Baker	4.6	8.6	422.8	Adjusted transmission line to the west and south to minimize noise and visual impacts
Durbin Quarry Transmission Line Alternative ³	Baker	2.8	2.1	130.0	Shifted transmission line to avoid crossing ODOT quarry

⁶ The route and road additions are “additive;” certificate holder therefore would have more options and flexibility to accommodate landowner preferences and final facility design needs, however, the final facility will ultimately select one approved route, approved alternative route, or proposed routes in RFA1. Actual acreage/disturbance impacts from the facility will be significantly less than approved in the ASC and evaluated in this order.

Table 2: RFA1 Proposed Alternative Route and Access Road Additions⁶

Proposed Site Boundary Additions	County	Length of Addition – Transmission Line (miles)	Length of Addition – Access Road (miles)	Area of Addition (acres)	Description of Site Boundary Addition
Access Road Changes in Baker County	Baker	NA	17.0	95.5	Road design changes
Access Road Changes in Malheur County	Malheur	NA	7.4	139.1	Road design changes
TOTAL	NA	8.8	45.9	1,036.0	NA

Notes:

¹ The Little Juniper Canyon Transmission Line Alternative would be an alternative to 1.3 miles of Previously Approved transmission line; 0.1 miles longer than approved route segment.

² The True Blue Gulch Transmission Line Alternative would be an alternative to 2.9 miles of Previously Approved transmission line; 1.7 miles longer than approved route segment.

³ The Durbin Quarry Transmission Line Alternative would be an alternative to 2.8 miles of Previously Approved transmission line; 0.7 miles shorter than the approved route segment.

Source: B2HAMD RFA1 2023-06-08, Table 4.1-1. Proposed Site Boundary Additions

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2

II.B.1. Recommended Amended and New Site Certificate Condition Summary

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4

5 RFA1 Attachment 6-1 presents the certificate holder’s proposed changes to the description of
6 the site boundary, approved transmission line corridors and access roads; and amendments to
7 site certificate conditions. Based on the evaluation presented in Section III. *Evaluation of*
8 *Council Standards*, as applicable based on the certificate holder’s proposed changes, the
9 Department’s recommended changes to the site certificate and conditions are presented in the
10 draft amended site certificate (Attachment 1 of this order).

11

12 In many instances, the certificate holder requests to remove a timing constraint (i.e.
13 requirement to submit documentation within a certain number of days prior to construction)
14 associated with a preconstruction submittal. The preconstruction timing constraint was
15 imposed to provide sufficient time for agencies to review the draft final documentation, prior
16 to commencing construction. The Department considers it reasonable for there to be an
17 alternative timeframe that the specific timing constraint imposed in the condition that is still
18 prior to construction while providing an adequate opportunity to review the applicable
19 information. In these instances, the Department recommends Council amend the condition to
20 allow the Department to review and approve an alternate timeframe, if requested by the
21 certificate holder, but not to remove the timing constraint wholesale as requested by certificate
22 holder.

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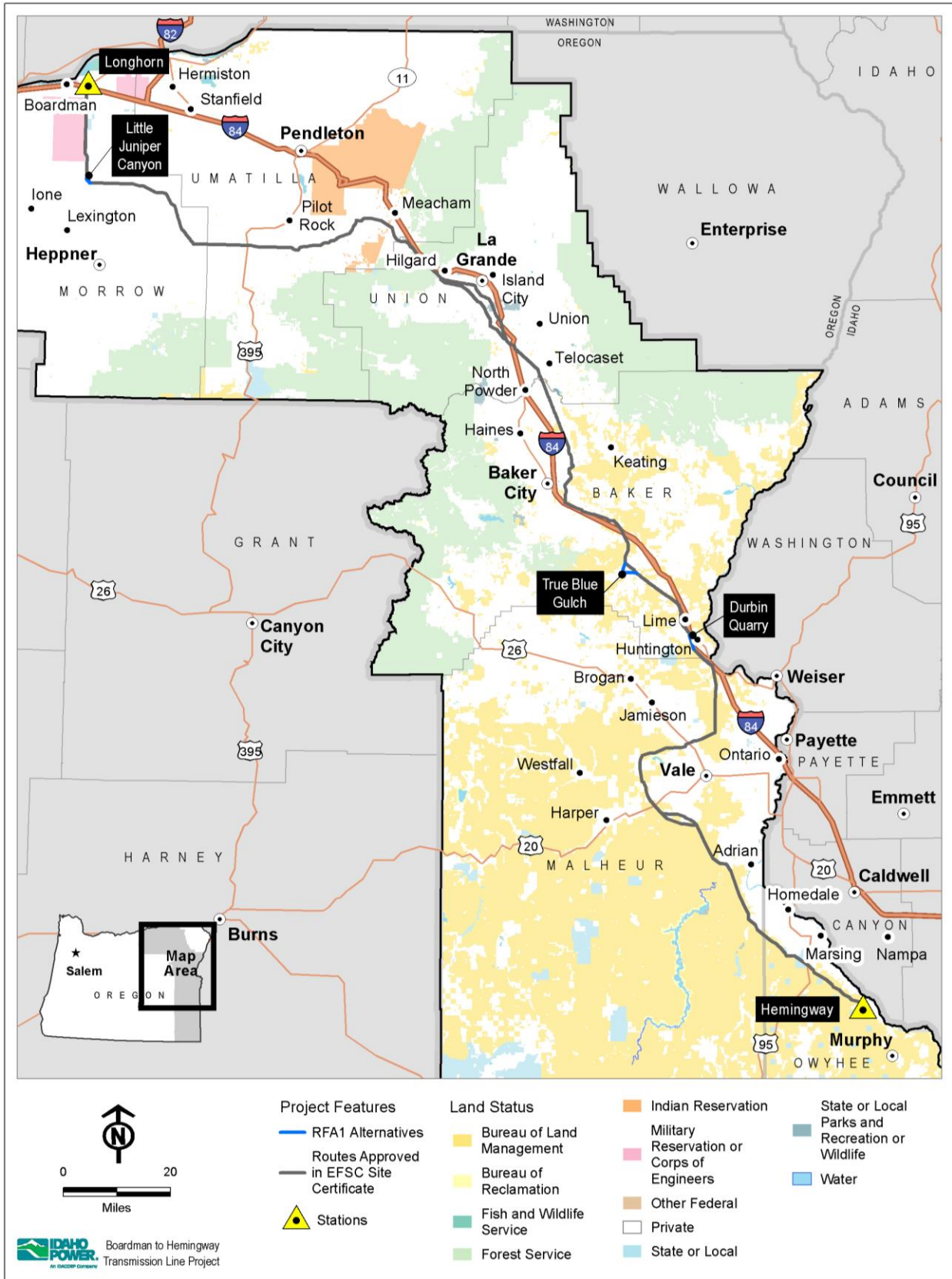
24 Recommended changes to conditions include administrative corrections and substantive
25 changes to support certificate holder implementation and Department review and
26 enforcement.

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II.B.2. Location of Transmission Line Route and Road Additions by County

RFA1 proposed transmission line route alternatives (referred to as Little Juniper Canyon, True Blue Gulch and Durbin Quarry; see black box callouts on figure) are presented in Figure 3 below. The road and transmission line additions are discussed in more detail by county in the following section.

Figure 3: Proposed RFA1 Route Additions



1

1 *III.B.2.a Morrow County: Route and Road Additions*

2

3 The proposed Little Juniper Canyon alternative is located between Little Juniper Lane and
 4 Bombing Range Road approximately 3 miles south of Naval Weapons Systems Training Facility –
 5 Boardman (NWSTF Boardman). The predominant land use at the Little Juniper Canyon
 6 alternative is dryland agriculture.⁷ Several proposed changes in Morrow County are associated
 7 with access road design updates along the previously approved routes. This includes roads in
 8 agricultural areas near NWSTF Boardman and roads in rangeland areas near Butter Creek. Table
 9 3 identifies the major components and related and supporting facilities associated with each of
 10 the site boundary changes in Morrow County.

11

Table 3: Summary of Proposed Additions – Morrow County

Project Features	Little Juniper Canyon Alternative	Access Road Changes	Total Number of Sites
Towers – Single Circuit 500-kV Lattice	4	-	4
Pulling and Tensioning Sites	2	-	2
Access Roads			Total Miles
Existing, 21-70% Improved	1.0	0.9	1.9
Existing, 71-100% Improved	-	-	-
New, Bladed	0.2	1.8	2.0
New, Overland	0.2	0.1	0.3
Crossings			Number of Crossings
High-Voltage Transmission Line Crossings	-	-	0
Existing Road Crossings	1	-	1
Existing Railroad Crossings	-	-	0
Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-1			

12

13 *III.B.2.b Umatilla County: Road Additions*

14

15 The proposed site boundary additions in Umatilla County are limited to access road design
 16 updates along the previously approved route in open rangeland and forested areas.⁸ Table 4
 17 identifies the major components and related or supporting facilities associated with each of the
 18 proposed additions in Umatilla County.

19

⁷ B2HAMD1 RFA1 2023-06-08. Figure 4-1, Map 1.

⁸ B2HAMD1 RFA1 2023-06-08. Figure 4-2, Maps 5 to 11.

Table 4: Summary of Proposed Additions – Umatilla County

Project Features	Access Road Changes	Total Number of Sites
Towers – Single Circuit 500-kV Lattice	-	-
Pulling and Tensioning Sites	-	-
Access Roads		Total Miles
Existing, 21-70% Improved	1.4	1.4
Existing, 71-100% Improved	-	-
New, Bladed	2.0	2.0
New, Overland	-	-
Crossings		Total Crossings
High-Voltage Transmission Line Crossings	-	-
Existing Road Crossings	-	-
Existing Railroad Crossings	-	-
Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-3		

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III.B.2.c Union County: Road Additions

The proposed site boundary additions in Union County are limited to access road design updates along the previously approved routes in open rangeland and forested areas.⁹ Table 5 identifies the major components and related or supporting facilities associated with each of the proposed changes in Union County.

Table 5: Summary of Proposed Additions – Union County

Project Features	Access Road Changes	Total Number of Sites
Towers – Single Circuit 500-kV Lattice	-	-
Pulling and Tensioning Sites	-	-
Access Roads		Total Miles
Existing, 21-70% Improved	0.3	0.3
Existing, 71-100% Improved	0.1	0.1
New, Bladed	1.4	1.4
New, Overland	-	-
Crossings		Total Crossings
High-Voltage Transmission Line Crossings	-	-
Existing Road Crossings	0	0
Existing Railroad Crossings	0	0
Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-5		

⁹ B2HAMD1 RFA1 2023-06-08. Figure 4-2, Maps 12 to 17.

1 *III.B.2.d Baker County: Route and Road Additions*

2

3 The proposed site boundary additions in Baker County include two transmission line
 4 alternatives and proposed access road additions. The True Blue Gulch Alternative is
 5 approximately 4 miles southwest of Durkee and one mile south of the Burnt River Canyon in
 6 mountainous terrain.¹⁰ The True Blue Gulch Alternative includes a portion of site boundary that
 7 is larger than typical to allow for flexibility in micrositing the final design.¹¹ The Durbin Quarry
 8 Alternative is located on the west side Interstate 84 at Huntington in open rangeland.¹² The
 9 proposed access roads are predominantly in open rangeland settings in Baker County (Figure 4-
 10 2, Maps 18 to 27). Table 6 identifies the major components and related or supporting facilities
 11 associated with each of the proposed additions in Baker County.

12

Table 6: Summary of Proposed Additions – Baker County

Project Features	True Blue Gulch Alternative	Durbin Quarry Alternative	Access Road Changes	Number of Sites
Towers – Single Circuit 500-kV Lattice	14	10	-	24
Pulling and Tensioning Sites	4	4	-	8
Access Roads				Total Miles
Existing, 21-70% Improved	-	-	3.0	3.0
Existing, 71-100% Improved	4.7	-	1.8	6.5
New, Bladed	3.8	2.1	1.3	7.2
New, Overland	0.1	-	0.2	0.3
Crossings				Total Crossings
High-Voltage Transmission Line Crossings	0	0		0
Existing Road Crossings	0	0		0
Existing Railroad Crossings	0	0		0
Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-7				

13

14 *III.B.2.e Malheur County: Road Additions*

15

16 The proposed site boundary additions in Malheur County are limited to access road changes in
 17 open rangeland (Figure 4-2, Maps 28 to 41). Table 7 identifies the major components and
 18 related or supporting facilities associated with each of the proposed additions in Malheur
 19 County.

20

¹⁰ B2HAMD1 RFA1 2023-06-08. Figure 4-1, Maps 2 to 4.

¹¹ B2HAMD1 RFA1 2023-06-08. Figure 4-1, Map 2.

¹² B2HAMD1 RFA1 2023-06-08. Figure 4-1, Maps 5 to 6.

Table 7: Summary of Proposed Changes – Additions County

Project Features	Access Road Changes	Number of Sites
Towers – Single Circuit 500-kV Lattice	-	-
Pulling and Tensioning Sites	-	-
Access Roads		Total Miles
Existing, 21-70% Improved	1.9	1.9
Existing, 71-100% Improved	1.5	1.5
New, Bladed	3.7	3.7
New, Overland	0.3	0.3
Crossings		Total Crossings
High-Voltage Transmission Line Crossings	-	-
Existing Road Crossings	-	-
Existing Railroad Crossings	-	-
Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-9		

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II.C. COUNCIL REVIEW PROCESS FOR AMENDMENTS

RFA1 is being reviewed under the Type A review process pursuant to OAR 345-027-0351(2). The Type A review process includes a DPO public hearing and opportunity for a contested case proceeding.

II.C.1. Request for Amendment

On December 7, 2022, the certificate holder submitted its preliminary Request for Amendment 1 (pRFA1). The Department reviewed pRFA1 to determine whether or not the request contained sufficient information for the Council to make findings.

On December 15, 2023, the Department issued Public Notice that pRFA1 had been received as required by OAR 345-027-0360(2).

On January 27, 2023, the Department notified the certificate holder that pRFA1 was incomplete and requested additional information. On June 8, 2023, following receipt and review of the additional information requested, the Department notified the certificate holder that pRFA1 was complete.

On June 14, 2023, the Department posted the complete RFA1 to its project webpage and issued a Public Notice of a comment period on the complete RFA and Draft Proposed Order (DPO).

II.C.2. Draft Proposed Order

1 The Public Notice of the DPO initiated~~s~~ a public comment period on RFA1 and the DPO, which
2 extended from June 14 through July 18, 2023. Prior to the close of the DPO public hearing, the
3 certificate holder requested, and the Council granted, an extension of the record to July 19,
4 2023 at 10 a.m. to afford the certificate holder an opportunity to review and respond to the
5 issues raised on the record of the DPO public hearing. To raise an issue on the record of the
6 DPO, a person must have raised~~d~~ the issue in a written comment submitted between the date of
7 the Public Notice of the DPO and the written comment deadline established in the Public
8 Notice. The Council ~~will~~can not accept or consider public comments on RFA1 or on the DPO
9 received after the written comment deadline.

10
11 On the record of the DPO public hearing, testimony and written comments were received from
12 3 members of the public and two special interest groups (STOP B2H Coalition and Oregon-
13 California Trails Association). Attachment 2 to this order includes a DPO comment index and
14 copies of all comments received. Responses to issues raised in DPO comments were provided
15 by the certificate holder. Attachment 3 to this order includes certificate holder responses to
16 DPO comments. Issues raised in DPO comments are summarized in Table A-1 below and
17 incorporated, as applicable, into the recommended findings of fact in Section III., *Evaluation of*
18 *Council Standards.*

Table A-1: Summary of DPO Comments, Certificate Holder Responses, Council Review, and Department Recommendations (as represented in Proposed Order)

<u>Commenter</u>	<u>Comment Summary</u>	<u>Certificate Holder Response Summary</u>	<u>DPO Applicability (Section Reference)</u>	<u>Recommendations, Responses, and Location in Proposed Order</u>
<u>Public Comments</u>				
<u>STOP B2H</u>				
<u>STOP B2H – 07-18-2023 Written Comments</u>	<p><u>Comments related to the Oregon Forest Practices Act (FPA):</u></p> <ul style="list-style-type: none"> <u>New OARs for the Oregon Dept. of Forestry (ODF), apply to the facility</u> <u>Reforestation practices apply to the facility</u> <u>Plan for an Alternate Practice</u> <u>Conditions in the Site Certificate conflict with and waive requirements of FPA</u> 	<p><u>Comments outside the scope of the Council’s review because the Council has chosen not to assert jurisdiction over the application of the FPA for the facility, as amended. Certificate holder will work directly with ODF regarding compliance with FPA requirements, including its Plan for an Alternate Practice</u></p>	N/A	<p><u>Department and Council concur with certificate holder responses that, in the Final Order on ASC, Council did not assert jurisdiction of the FPA and stated certificate holder should work directly with ODF but the certificate holder nonetheless must comply with applicable provisions of FPA, including but not limited to the Plan of Alternate Practice.¹³</u></p> <p><u>Pursuant to Council direction at the RFA1 DPO hearing, the proposed order includes a statement asserting that Council has not established jurisdiction over the FPA. See Section III.R., Other Applicable Regulatory Requirements Under Council Jurisdiction, which summarizes Council’s prior position in the Final Order on ASC regarding the FPA.</u></p>
<u>STOP B2H – 07-18-2023 Written Comments</u>	<p><u>Roads and associated structures, access and construction areas had not been completed and as such were not available to analyze in the Final Environmental Impact Statement (“EIS”).</u></p> <p><u>Detailed analysis of impacts to waters of the US was not conducted during the final EIS due to lack of availability of micro-siting information for tower pads, laydown yards, tensioning sites and other sub facilities.</u></p>	<p><u>The EIS is a federal review conducted pursuant to the National Environmental Policy Act. The EIS is outside the Council’s jurisdiction and concerns regarding the analysis in the EIS are outside the scope of RFA1.</u></p>	N/A	<p><u>Certificate holder response sufficient. No revisions to Proposed Order recommended.</u></p>
<u>STOP B2H – 07-18-2023 Written Comments</u>	<p><u>For the record and specificity, we would like to incorporate the comments of Jim Kreider, Stop B2H Coalition, Wendy King, and Sam Myers in the Public Utility Commission of Oregon (“OPUC”) docket UM2209.</u></p>	<p><u>STOP B2H’s reference to “specificity” appears to suggest that STOP B2H seeks to preserve for a potential contested case in this matter any issues raised in other parties’ testimonies in a separate proceeding before an entirely different agency. ORS 469.370(3) requires that “[a]ny issue that may be the basis for a contested case . . . be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue.” Referring to comments from multiple parties in a separate proceeding before a different agency does not inform the Council, ODOE, or Idaho Power of any alleged error in the DPO for RFA1.</u></p>	N/A	<p><u>Department added footnote in Section II.C.4 reiterating ORS 469.370(3) and explaining Council’s position that it will not accept DPO comments that are provided by reference.¹⁴</u></p>

¹³ Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO. EFSC review and approval of Meeting Minutes usually occurs 1-2 months after the applicable meeting.

¹⁴ Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO.

Table A-1: Summary of DPO Comments, Certificate Holder Responses, Council Review, and Department Recommendations (as represented in Proposed Order)

<u>Commenter</u>	<u>Comment Summary</u>	<u>Certificate Holder Response Summary</u>	<u>DPO Applicability (Section Reference)</u>	<u>Recommendations, Responses, and Location in Proposed Order</u>
<u>STOP B2H – 07-18-2023 Written Comments</u>	<u>The OPUC inserted conditions in the 2023 Wildfire Mitigation Plan after the issues raised by STOP were not corrected from the 2022 Wildfire Plan. The problems in the 2022 and 2023 Wildfire Prevention and Risk Management Plans will affect areas in Union County that are being modified in RFA 1. It will also impact roads already approved.</u>	<u>The proper venue to raise these concerns was in OPUC Docket UM 2209, STOP B2H fully participated in that proceeding. The process in Docket UM 2209 was robust, and as STOP B2H acknowledges in its comments, the OPUC approved Idaho Power’s 2023 Wildfire Mitigation Plan in that docket.</u> <u>Utilities annual Wildfire Mitigation Plans under the OPUC’s jurisdiction are intended to be living documents, and changes to them are intended to be iterative. While the OPUC recommended additional actions that the Company should take when preparing its 2024 Wildfire Mitigation Plan, the OPUC and other stakeholders, including STOP B2H, will continue to have the opportunity to participate in these annual WMP updates and provide comments and suggestions for updated wildfire mitigation strategies in Docket UM 2209.</u>	<u>Section III.N., Wildfire Prevention and Risk Mitigation</u>	<u>Footnote added to Section III.N., Wildfire Prevention and Risk Mitigation, to provide certificate holder response and reiterate existing findings acknowledging OPUC staff that WMPs are intended to be updated, iterative, and adaptable.</u>
<u>STOP B2H – 07-18-2023 Written Comments</u>	<u>The OPUC Order 23-222 is conditional due to lack of clarity and the additional work the applicant has been told to complete. OPUC staff has 37 recommendations to work through with Idaho Power before Idaho Power’s Wildfire Plan for Oregon is considered complete.</u>	<u>OPUC approved Idaho Power’s 2023 Wildfire Mitigation Plan and recommended additional information that Idaho Power should include in the 2024 Wildfire Mitigation Plan, but also noted that there may be implementation issues, and in some cases, recommendations may need to be modified, and directed Idaho Power to consult with Staff regarding implementation of recommendations and include a summary of that consultation in its 2024 Wildfire Mitigation Plan. Idaho Power will take this direction from the OPUC into account when preparing its 2024 Wildfire Mitigation Plan.</u>	<u>Section III.N., Wildfire Prevention and Risk Mitigation</u>	<u>See response above.</u>
<u>STOP B2H – 07-18-2023 Written Comments</u>	<u>The Union County Community Wildfire Protection Plan identifies the Morgan Lake/Glass Hill, Perry/Hilgard, and Kamela areas as wildland-urban interface areas or WUI’s. They are in the B2H’s site boundary. However, IPC has refused to show their fire risk calculations that they were asked to show in 2022 to determine how 3 other agencies’ analyses identifies high risk fire areas in the route of the B2H but IPC does not get the same results. Therefore, we do not know why 3 other entities, in the Wildfire mapping community, see these as high-risk wildfire zones and IPC does not. Which brings into question all of IPC’s wildfire work and the Site Certificate Conditions regarding wildfire risk and public services.</u>	<u>As discussed above, STOP B2H raised this concern in comments in OPUC Docket UM 2209 and OPUC recommended that Idaho Power “should consider the larger communications challenge of ensuring that residents in its service territory are aware of why it has designated certain areas as high fire risk zones and not others, and that they better understand why entities may use different methodologies, have different goals for designation, or have different inputs to the modeling. It should then work to close that information gap.” Idaho Power will continue working to address this OPUC recommendation in the Company’s 2024 plan, a copy of which will be submitted to the Council.</u>	<u>Section III.N., Wildfire Prevention and Risk Mitigation</u>	<u>Existing Section III.N., Wildfire Prevention and Risk Mitigation describes wildfire risk modeling in the WMPs.</u> <u>An additional footnote added incorporating certificate holder’s response to I. Gilbert statement regarding wildfire risk modeling insufficiencies. Added text includes Dr. Lautenberger testimony about how the modeling includes loss of life and structures.</u>

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<u>Commenter</u>	<u>Comment Summary</u>	<u>Certificate Holder Response Summary</u>	<u>DPO Applicability (Section Reference)</u>	<u>Recommendations, Responses, and Location in Proposed Order</u>
<p><u>STOP B2H – 07-18-2023 Written Comments</u></p>	<p><u>The bond amount and flexibility currently included in the site certificate fails to provide for the protection of landowners, residents, ratepayers, and public agencies, from the liability that will occur in the event Idaho Power abandons the transmission line or declares bankruptcy without restoring the site. The current ownership of the transmission line by Idaho Power and PacifiCorp increases the likelihood that the transmission line may be abandoned without restoration because the companies are allegedly at risk of filing for bankruptcy due to ongoing and potential future wildfire-related litigation that may result in millions and potentially billions of dollars owed.</u></p>	<p><u>STOP B2H’s arguments were already litigated in the EFSC proceeding for the ASC, and EFSC found that the estimated cost of restoration was reasonable and certificate holder provided sufficient information about its financial capability to demonstrate that it could obtain a bond or letter of security to cover required decommissioning and restoration costs. While STOP B2H focuses on ongoing wildfire litigation related to PacifiCorp and implies that PacifiCorp is at risk of filing for bankruptcy, Idaho Power—as the certificate holder—is responsible for the bond to cover the decommissioning and restoration costs associated with retirement of the facility per Retirement and Financial Assurance Conditions 2 through 5. Moreover, as stated above, EFSC has already concluded that Idaho Power is financially capable of obtaining a bond in the amount necessary to restore the facility site to a useful non-hazardous condition. Finally, if there are any changes that would require adjustment of the bond amount, Retirement and Financial Assurance Condition 5 requires certificate holder to provide EFSC and ODOE a report every five years on: (a) the physical condition of the facility; (b) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (c) the facility’s performance in the context of the larger Northwest power grid; and (d) the certificate holder’s financial condition, including the certificate holder’s credit rating at that time. Importantly, under the condition, EFSC may request the report on an off-cycle year if requested. Moreover, the condition allows EFSC to consider whether or not the approach towards the financial assurance instrument remains appropriate and would account for unforeseen shifts in the power grid or the Idaho Power’s financial condition.</u></p>	<p><u>Section III.G., Retirement and Financial Assurance (Not referenced in comments)</u></p>	<p><u>PacificCorp is not the certificate holder for the facility. Stop B2H’s comments related to concerns about liability in the event of a wildfire are outside the scope of the Retirement and Financial Assurance standard and RFA1, and not supported by facts. Certificate holder response sufficient. No revisions to Proposed Order recommended.</u></p>
<p><u>STOP B2H – 07-18-2023 Written Comments</u></p>	<p><u>Idaho Power is submitting RFAs in piecemeal fashion intentionally to avoid greater public engagement, and recommends that the RFA1 should be viewed as new application.</u></p>	<p><u>RFA1 includes discrete route changes and road modifications that include impacts that are substantially similar in nature to the impacts already approved in the Council’s Final Order on the ASC.</u></p> <p><u>Additionally, STOP B2H’s allegations regarding Idaho Power’s intentions regarding the RFAs are entirely unfounded. As described in the RFA DPO and in oral comments from B2H Project Manager Joseph Stippel at the July 18, 2023 RFA DPO</u></p>	<p><u>N/A</u></p>	<p><u>Certificate holder response sufficient. No revisions to Proposed Order recommended.</u></p>

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		<u>Comment Hearing, the transmission line alignment modifications are discrete changes that were driven by Idaho Power continuing to work with landowners to reduce impacts and refine the project location prior to construction. The road modifications included were intended to refine access road locations and improve constructability of the project.</u>		
<u>STOP B2H – 07-18-2023 Written Comments</u>	<u>Idaho Power’s maps do not comply with Council rules, and asserts that STOP B2H had difficulty locating new access roads, and further asserts that “landowners and other interested parties cannot find all the information they need to properly comment on RFA 1 and therefore there needs to be a new map set developed and an extension of time so all parties can get their bearing and comment effectively.</u>	<u>Idaho Power provided mapping with the RFA1 submittal showing a sufficient level of detail to delineate the site boundary additions included in RFA1. In particular, the maps included as references on page 5 of STOP B2H’s DPO comments include a legend that shows that the new site boundary additions are shown with a black and white outline, and the previously approved grey shading reflects site boundary that was previously approved.</u>	<u>N/A; Comment related to RFA1</u>	<u>Certificate holder response sufficient. No revisions to Proposed Order recommended.</u> <u>Department explained during Council’s review of the RFA1 DPO that to provide maps that show road details from the previously approved ASC and roads proposed in RFA1 would be confusing and hard to distinguish between the approved roads and proposed roads for the EFSC review of RFA1. Department reiterated that the certificate holder is adding roads and routes to allow flexibility in final design and construction of the facility, as amended. However, the final facility will not include all approved routes and roads.</u> <u>Department also described that many of the roads in RFA1 are a small extension of a previously approved road and discussed the Department’s online mapping tool as another way for interested persons to review the proposed routes and roads.</u>
<u>STOP B2H – 07-18-2023 Written Comments</u>	<u>Shortening the time periods described in GEN-PS-01 (helicopter use plan) will increase the risk of health and safety impacts resulting from helicopter use, and proposes that the 30 day notice requirements for adjacent landowners from the original condition language should be retained, and the 30 day notice requirement to the Oregon Department of Aviation (“ODA”) for consultation should be retained unless ODA approves a shorter timeframe in writing.</u>	<u>Condition GEN-PS-01 contemplates that certificate holder will finalize a Helicopter Use Plan in coordination with ODOE and each affected county where helicopter use is anticipated during construction. As noted in the DPO, the modifications to the timing in condition GEN-PS-01 are intended to allow additional flexibility in timing for preconstruction conditions.</u> <u>certificate holder proposed these modifications to allow additional flexibility in scheduling helicopter operations. If the Council would prefer to include a defined period for notice, certificate holder proposes that a 3-day landowner notice is sufficient to preserve the flexibility of the construction process. This will create a more adaptable approach for the</u>	<u>III.M., Public Services, III.M.1.h Traffic Safety; Attachment 1: Draft First Amended Site Certificate - Public Services Condition 3</u>	<u>Council directed adoption of certificate holder’s proposed 3-day notice to landowners added to Recommended Amended Public Services Condition 3, this revision and supporting findings are added to III.M., Public Services, III.M.1.h Traffic Safety.¹⁵</u>

¹⁵ Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO.

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		<u>construction team to work with adjacent landowners on a schedule that is adaptable to the needs of everyone, including impacted landowners. For example, with a shorter notice period, certificate holder may be able to accommodate landowner requests for modifications to scheduling helicopter activity, however, with a longer notice period, certificate holder would not be able to make such accommodations.</u>		
<u>STOP B2H – 07-18-2023 Written Comments</u>	<u>GEN-PS-01 fails to identify noise sensitive properties or identify unique hazardous locations.</u>	<u>There is no requirement to analyze construction noise, including helicopter use, or requirement to identify noise sensitive properties in connection with helicopter use. As noted in the DPO regarding construction noise:</u> <u>Because construction related noise is exempt from the DEQ noise rules, an evaluation of construction noise generated from auxiliary vehicle use on new or improved roads, and multi-use areas, and helicopter use at NSRs is not required</u>	<u>N/A; (No section referenced in comments)</u>	<u>Certificate holder response sufficient. No revisions to Proposed Order recommended.</u>
<u>STOP B2H – 07-18-2023 Written Comments</u>	<u>ODOE’s recommended revisions to site certificate condition GEN-SP-01 are inconsistent with the Council’s obligation to ensure compliance with state laws and council rules effective the date the amended site certificate is issued. Revising the condition to include “unless otherwise agreed to by the Department” allows the Oregon Department of Energy to allow the developer to avoid compliance with the Council Standard addressed by the National Pollutant Discharge Elimination System (“NPDES”) 1200-C and Erosion and Sediment Control Plan (“ESCP”) contained in the site certificate. STOP B2H further asserts that this revision “circumvents the procedure in the Site Certificate requiring the agency consultation process be followed for changes in the Soil Protection Standard and plan.”</u>	<u>As ODOE explained in the DPO, an ESCP can be revised throughout construction to address numerous changes but the language of existing Soil Protection Condition 1 (Condition GEN-SP-01) could be interpreted to limit the ESCP to the version approved prior to construction. ODOE further asserted that it must be given authority to require revisions to the ESCP because it is the ESCP that Council relies upon to ensure that erosion impacts are minimized, in compliance with the Soil Protection Standard. For these reasons, ODOE recommended the revisions to Soil Protection Condition 1 (Condition GEN-SP-01).</u>	<u>Section III.D., Soil Protection; Attachment 1 Draft Amended Site Certificate</u>	<u>Certificate holder response sufficient. No revisions to Proposed Order recommended.</u> <u>During its review of the RFA1 DPO the Department reiterated the basis for the condition revision as described in the DPO and added that the condition revisions are actually more restrictive rather than less restrictive and give the Department the ability to require changes to a ESCP to address any conditions on site that must be mitigated.</u>
<u>STOP B2H – 07-18-2023 Written Comments</u>	<u>Condition GEN-SP-04(a) Page 25 of First Amended Site Certificate: Makes significant changes in the requirements regarding the Blasting Plan which should not be implemented including: Adding the word “related blasting” to the first line of Item (a) would result in no longer requiring the developer to determine whether there will be a need for blasting prior to the start of construction. The</u>	<u>As an initial matter, the proposed amendment to Soil Protection Condition 4 (Condition GEN-SP-04), subsection (a) would not result in certificate holder being allowed to avoid ODOE review of the final Framework Blasting Plan. Rather, the change from “[p]rior to construction” to “[p]rior to construction-related blasting” simply allows Idaho Power to submit the final Framework Blasting Plan to ODOE closer to (but still prior to) the time blasting activities are anticipated to</u>	<u>Section III.D., Soil Protection (No Section referenced in comments); Attachment 1: Draft Amended Site Certificate</u>	<u>Certificate holder response sufficient. No revisions to Proposed Order recommended.</u> <u>During its review of the RFA1 DPO the Department reiterated the basis for the condition revision as described in the DPO. Which describes that there are no specific local permits or local or state regulatory requirements within Council’s jurisdiction that apply to blasting or use of</u>

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	<p>changes to this site certificate condition results in a failure of the Site Certificate to provide for the safety of property owners impacted by the development. It also places at risk the requirement that the developer identify wells and springs that may be impacted by blasting that is required as a monitoring condition. Impacts to wells and springs can pose a health hazard to citizens as well as cause significant economic damages in the event the developer fails to provide mitigation for the impacts. The change fails to assure compliance with council standards including providing for the health and safety of citizens, provide mitigation for impacts to resources, and the requirement that the developer assume the costs of monitoring.</p> <p>*** STOP B2H recommends that the following changes should be incorporated in Gen-SP-01 to comply with ORS 469.401(2):</p>	<p>occur during the construction process. This change in timing is necessary because certificate holder will not have complete information about planned blasting at the time initially contemplated in the existing plan.</p> <p>Furthermore, per the proposed amendment to subsection (b), Idaho Power is still required to discuss with the landowner any blasting that the certificate holder plans to conduct on the landowner’s property prior to any construction-related blasting occurring. If the landowner identifies a natural spring or well on the property, Idaho Power must notify the landowner that at the landowner’s request, Idaho Power will conduct pre- blasting baseline flow and water quality measurements for turbidity. Moreover, per the condition, certificate holder is required to compensate the landowner for adequate repair or replacement if damages to the flow or quality of the natural spring are caused by blasting.</p>		<p>explosives. There are also no local or state blasting or use of explosive regulations that are within the jurisdiction of Council or reviewing agencies, thus the agency consultation portion of condition was removed.</p> <p>The blasting plan condition was adopted based upon a certificate holder representation.</p>
<p>STOP B2H – 07-18-2023 Written Comments</p>	<p>Notice has not been provided per ORS 183.415. This statute requires specific actions when “actions taken by state agencies” affects the public.</p> <p>* * * * *</p> <p>No such information was provided to the impacted people in person, by registered or certified mail even though every residence within at least one half mile of the transmission line will be affected by the noise exemption and variance that EFSC has approved as well as the fact that ODOE and EFSC were provided comment during the original Site Certificate process regarding the failure of the agency to meet the Public Notice Requirements of Oregon Statutes when their actions may impact a landowner.</p>	<p>ORS 183.415 applies only “[i]n a contested case[.]”³⁹ The DPO hearing is not a contested case, and for that reason ORS 183.415 does not apply to the DPO hearing.</p> <p>Rather, notice of the DPO must be issued consistent with ORS 469.370(2). ODOE provided notice of the DPO in accordance with that statute.</p>	<p>N/A</p>	<p>Certificate holder response sufficient. No revisions to Proposed Order recommended.</p>
<p>Irene Gilbert</p>				
<p>Irene Gilbert – 07-17-2023</p>	<p>Comments related to the Oregon Forest Practices Act (FPA):</p>	<p>As discussed above in response to STOP B2H’s comment, Council has elected not to assert jurisdiction over the application of the Forest Practices Act for the facility, as</p>	<p>N/A</p>	<p>Department and Council concur with certificate holder responses that Council did not assert jurisdiction of the FPA and that the certificate holder nonetheless must</p>

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<u>Oral Comments</u>	<ul style="list-style-type: none"> • <u>The facility is subject to the reforestation requirements of the FPA</u> • <u>New ODF Rules have specific designations for setbacks and protection measures for federally and state listed species that are applicable to the facility</u> • <u>Concerns of roads crossing streams and waterways</u> 	<u>amended. Certificate holder is seeking approval of a Plan for an Alternate Practice from ODF providing an exemption from the Forest Practices Act’s reforestation requirements.</u>		<p><u>comply with applicable provisions of FPA, including but not limited to the Plan of Alternate Practice.</u></p> <p><u>Text added to Section III.R., Other Applicable Regulatory Requirements Under Council Jurisdiction, which summarizes position in Final Order on ASC regarding the FPA.</u></p>
<u>Irene Gilbert – 07-18-2023 Oral Comments</u>	<p><u>I don't know who all has submitted comments, but I would like to incorporate into my presentation any and all comments that come before council If we are again told we can only be a limited party, I want to establish that that we may very well be interested in making comments on other comments.</u> * * * * *</p> <p><u>The Noxious Weed Plan doesn't provide for monitoring for the life of the development and so I'd like to incorporate the comments that were made by STOP B2H in the prior decision process and also Susan Geer who made several submissions about it.</u></p>	<p><u>ORS 469.370(3) requires that “[a]ny issue that may be the basis for a contested case . . . be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue.” Referring to comments from multiple parties in a separate proceeding before a different agency does not inform the Council, ODOE, or certificate holder of any alleged error in the DPO for RFA1.</u></p>	<u>N/A</u>	<p><u>In its review of this comment and discussion by Council, Council requested Department include a summary of Council, Hearing Officer, and Supreme Court position about the appropriateness of limiting parties in a contested case to issues they themselves properly raised.¹⁶</u></p> <p><u>Department added footnote in Section II.C.4, describing the history of the litigated issue of “full” and limited party status in a contested case proceeding.</u></p>
<u>Irene Gilbert – 07-18-2023 Oral Comments</u>	<p><u>In the OPUC hearings, Idaho Power said that they don’t develop plans during the construction period. Their plans all focus on after the development is operational.</u></p>	<p><u>The Wildfire Mitigation Plan applies to the Project during operation, certificate holder is also required by Public Services Condition 6 to the Site Certificate to adhere to the Fire Prevention and Suppression Plan, which identifies measures for preventing fires, and responding to fires that might occur during construction.</u></p>	<u>Section III.N., Wildfire Prevention and Risk Mitigation; Section III.M., Public Services (not identified in comment)</u>	<p><u>Certificate holder response sufficient. At Council’s request, proposed order Section III.N and III.M reiterate that a Fire Prevention and Suppression Plan applies to construction and the WMP applies to operation.¹⁷</u></p>
<u>Irene Gilbert – 07-18-2023 Oral Comments</u>	<p><u>Idaho Power does not consider injury or death to citizens in evaluating the fire management plan.</u></p>	<p><u>As explained in certificate holder’s Wildfire Mitigation Plan, the Company assesses wildfire risk by considering fire probability multiplied by the consequence of a fire. Consequence is defined as “Number of structures (i.e., homes, businesses, other man-made structures) that may be impacted by a wildfire.” These impacts to structures are a proxy for potential impacts to the individuals who would be in or use those structures.</u></p>	<u>Section III.N., Wildfire Prevention and Risk Mitigation</u>	<p><u>Existing Section III.N., Wildfire Prevention and Risk Mitigation describes wildfire risk modeling in the WMPs.</u></p> <p><u>Additional footnote added incorporating certificate holder in response to I. Gilbert statement. Added text includes Dr. Lautenberger testimony about how the modeling includes loss of life and structures.</u></p>

¹⁶ Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO.

¹⁷ Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO.

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		<p><u>Dr. Christopher Lautenberger, Idaho Power’s expert witness who helped prepare the Company’s Wildfire Mitigation Plan, clarified this at the hearing for Idaho Power’s Petition for a CPCN, where he stated: “[C]onsequence is the negative impacts to different assets at risk. Assets at risk that are typically prioritized when looking at utility caused fires are loss of life and loss of structures, and those were the two assets at risk that were considered consequences in the risk modeling that was conducted by Idaho Power to inform its Wildfire Mitigation Plan</u></p>		
<p><u>Irene Gilbert – 07-18-2023 Oral Comments</u></p>	<p><u>Ms. Gilbert argues that the bond amount is not reasonable to address restoration costs. Furthermore, Ms. Gilbert argues that the site certificate conditions regarding the bond are not flexible enough as they do not address unforeseen conditions, such as a company declaring bankruptcy because of costs associated with wildfire litigation liability. Ms. Gilbert specifically references ongoing litigation specific to PacifiCorp regarding the Labor Day fires and a negotiated settlement specific to Idaho Power.</u></p>	<p><u>These arguments were already litigated in the EFSC contested case proceeding for the ASC, and EFSC found that the estimated cost of restoration was reasonable and certificate holder provided sufficient information about its financial capability to demonstrate that it could obtain a bond or letter of security to cover required decommissioning and restoration costs. Ms. Gilbert focuses on ongoing wildfire litigation related to PacifiCorp and implies that PacifiCorp is at risk of filing for bankruptcy, Idaho Power—as the certificate holder—is responsible for the bond to cover the decommissioning and restoration costs associated with retirement of the facility per Retirement and Financial Assurance Conditions 2 through 5. Moreover, as stated above, EFSC has already concluded that certificate holder is financially capable of obtaining a bond in the amount necessary to restore the facility site to a useful non-hazardous condition. Finally, if there are any changes that would require adjustment of the bond amount, Retirement and Financial Assurance Condition 5 requires certificate holder to provide EFSC and ODOE a report every five years on: (a) the physical condition of the facility; (b) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (c) the facility’s performance in the context of the larger Northwest power grid; and (d) the certificate holder’s financial condition, including the certificate holder’s credit rating at that time. Importantly, under the condition, EFSC may request the report on an off-cycle year if requested. Moreover, the condition allows EFSC to consider whether or not the approach towards the financial assurance instrument remains appropriate and</u></p>	<p><u>Section III.G., Retirement and Financial Assurance (No Section referenced in comments)</u></p>	<p><u>PacifiCorp is not the certificate holder for the facility. Certificate holder response sufficient. No revisions to Proposed Order recommended.</u></p> <p><u>Comments related to concerns about liability in the event of a wildfire are outside the scope of the Retirement and Financial Assurance standard and RFA1, and not supported by facts.</u></p>

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<p>Irene Gilbert – 07-18-2023 Oral Comments</p>	<p><u>One revised site certificate condition causing me concern is this condition saying that the vegetation management plan is finalized. I have not reviewed the Vegetation Management Plan. I know that during the previous activities related to this, this plan is required to comply with OAR 345-025-0016. The plan does not provide for assuring that noxious weeds do not impact wildlife habitat; it's limited in the area that they are going to cover; does not provide for monitoring for the life of the development.</u></p>	<p><u>would account for unforeseen shifts in the power grid or the certificate holder's financial condition.</u></p> <p><u>Ms. Gilbert's comment conflates two distinct plans. The Vegetation Management Plan describes the methods in which vegetation along the transmission line will be managed during operation of the Project. The measures certificate holder will undertake to control noxious and invasive-plant species and prevent the introduction of these species within the Project site boundary are discussed in the Noxious Weed Plan.</u></p> <p><u>Ms. Gilbert raised these same challenges regarding the adequacy of certificate holder's Noxious Weed Plan in the contested case and these issues were fully litigated. In the Final Order, the Council adopted the Hearing Officer's conclusion that the "Noxious Weed Plan is adequate to serve its intended purpose of establishing the measures the applicant will take to control noxious weed species and prevent the introduction of these species during construction and operation of the project."</u></p>	<p><u>N/A (No Section referenced in comment); Attachment 1: Draft Amended Site Certificate</u></p>	<p><u>Certificate holder response sufficient. No revisions to Proposed Order recommended.</u></p> <p><u>The Noxious Weed Plan addresses weeds and would need to be finalized prior to construction (Fish and Wildlife Condition 3), this condition is not recommended to be amended. During its review of the DPO for RFA1, the Department reiterated the findings in the DPO related to the recommended revision. While the Vegetation Management Plan may need to be amended in the future, the plan is currently final. In addition, the plan includes requirements that apply during O&M and therefore the condition does not need to require that the plan be finalized, prior to construction, or implemented prior to operations.</u></p>
<p>Oregon- California Trails Association ("OCTA")</p>				
<p>Oregon- California Trails Association ("OCTA") – 07-17-2023 Written Comments</p>	<p><u>RFA1 Figure 4-2 Map 1. RFA1 new road lies just over the fence line (west) on the range are extensive Class 1 trail ruts. Have archaeological studies of the area of the new road been conducted, and if so what in a general did they reveal?</u></p>	<p><u>There were no new segments of the Oregon Trail that were identified in the agricultural area in Map 1 of Figure 4-2.</u></p> <p><u>A report for the surveys within the Direct Analysis Area completed through 2021, i.e., the Initial Class III Report for the Direct Analysis Area, is completed through 2021 and has been reviewed through the Section 106 process. An updated Oregon Visual Assessment of Historic Properties Intensive Level Survey ("VAHP ILS") for the Visual Assessment Analysis is being reviewed in the Section 106 process.</u></p>	<p><u>N/A, Comment applicable to RFA1 Figure 4-2</u></p>	<p><u>Certificate holder response sufficient to answer OCTA's question. No revisions to Proposed Order recommended.</u></p> <p><u>Department reiterates that Historic, Cultural, and Archaeological Resources Condition 1 (GEN-HC-01) continues to apply to the proposed site boundary additions in RFA1 and requires that during final design and construction of the facility, the certificate holder design and locate facility components to avoid direct impacts to Oregon Trail/National Historic Trail resources.</u></p> <p><u>Historic, Cultural, and Archaeological Resources Condition 2 requires the submission of the Historic Properties Management Plan (HPMP), which includes Appendix A.1 Inventory Tables with Management under OAR 345-022-0090. The Appendix A.1 Inventory Tables include all resources inventoried in the direct and indirect analysis area associated with the ASC and RFA1. AS part of updating/finalizing the HPMP, the certificate holder will submit updated Appendix A.1 Inventory Tables based</u></p>

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<p><u>Oregon-California Trails Association (“OCTA”) – 07-17-2023 Written Comments</u></p>	<p><u>RFA1 Figure 4-2 Map 12 and 13. We suspect that the new roads in this area will not be visible from the Oregon National Historic Trail (“ONHT”) which is on the other side of I-84 on a ridgeline. Has this been verified?</u></p>	<p><u>The viewshed maps for RFA1 identified areas that would have new potential visual impacts based upon the new alignments and roads. This analysis did not identify resources that would be newly affected by the proposed route changes other than those archaeological sites with aboveground components identified by certificate holder in the Direct Analysis Area and contained in the Initial Class III Report. (Confidential Attachment 7-11).</u></p> <p><u>Access road UN-002b, as depicted in Map 12 of Figure 4-2, would not be visible from intact NRHP-eligible Oregon Trail segments. There would be no new indirect (i.e., visual) impacts because UN-002b is a new access road using the old location of an abandoned road with surrounding vegetation, intervening topography, and a more prominent built environment.</u></p> <p><u>Access road UN-625, as depicted in Map 13 of Figure 4-2, would also not be visible from intact, identified NRHP-eligible Oregon Trail segments. There would be no new indirect (i.e., visual) impacts because UN-625 is shielded by intervening vegetation and topography.</u></p>	<p><u>N/A, Comment applicable to RFA1 Figure 4-2</u></p>	<p><u>upon final design, which will include mitigation and additional avoidance measures.</u></p> <p><u>Certificate holder response sufficient to answer OCTA’s question. No revisions to Proposed Order recommended.</u></p>
<p><u>Oregon-California Trails Association (“OCTA”) – 07-17-2023 Written Comments</u></p>	<p><u>RFA1 Figure 4-2 Map 16. The location of the ONHT in the area of Clover Creek is not well documented. The construction of I-84 probably obliterated much of the original route. Both the approved routing of the B2H transmission line and the new road will add to the degradation of the setting. The National Park Service’s routing of the trail through this area cannot be taken as definitive.</u></p>	<p><u>To the best of certificate holder’s knowledge, there are no previously recorded and/or intact segments of the Oregon Trail that have been identified through archaeological investigations in the vicinity of the Clover Creek area.</u></p> <p><u>Certificate holder has completed the cultural resources pedestrian surveys for the Direct Analysis Area in Map 16 and is in the process of updating the information for the preconstruction survey report (HPMP). No new cultural resources, including Oregon Trail segments, were identified in the vicinity of the Clover Creek area.</u></p>	<p><u>N/A, Comment applicable to RFA1 Figure 4-2</u></p>	<p><u>Certificate holder response sufficient. No revisions to Proposed Order recommended.</u></p>
<p>John Williams</p>				
<p><u>John Williams 07-18-2023 Oral and Written Comments</u></p>	<p><u>Concerned about impacts to cultural resource 8B2H-DM-52 and 8B2H-DM-47. SHPO guidance strongly recommends a 30-meter buffer between any construction and an archaeological site.</u></p>	<p><u>Mr. Williams’ comments regarding the impacts of the placement of transmission towers on his property are outside the scope of RFA1 as no modifications to tower locations are proposed in the Company’s RFA1 Application on Mr. Williams’ property.</u></p>	<p><u>Section III.K., Historic, Cultural, and Archaeological Resources, (No</u></p>	<p><u>As indicated by certificate holder, these resources are associated with the previously approved site boundary and facility components. These resources are associated with previously inaccessible areas from the ASC and have since been surveyed as part of Phase 2 surveys) surveys</u></p>

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	<p><u>Mr. Williams also raised concerns that he has not received all results of surveys conducted by Idaho Power on his property.</u></p>	<p><u>certificate holder and its contractors have indeed completed surveys in the 2023 season. These reports are still being finalized and once the data is processed and compiled, a property-specific survey memorandum will be provided to Mr. Williams that will indicate what surveys were performed and the results of those surveys.</u></p>	<p><u>Section reference in comment)</u></p>	<p><u>conducted once certificate holder gains access) and then resources are processed in the Section 106 review, summarized more before from Final Order on ASC.</u></p> <p><u>As discussed in the Final Order on ASC and in the DPO for RFA1, the Council’s Historic, Cultural, and Archaeological Resources standard under OAR 345-022-0090(1)(a) requires the Council to evaluate impacts to and mitigation for resources that are listed or likely to be listed on the National Register of Historic Places (NRHP). The Oregon State Historic Preservation Office (SHPO) is the agency in Oregon that assists in making determinations of eligibility. If a project has a federal nexus, a project is regulated by the Section 106 process led by the lead federal agency. Section 106 includes detailed consultation with affected Tribes and applicable state SHPO’s. Council previously found that under ORS 469.370(13), for facilities that are subject to review by a federal agency under the National Environmental Policy Act (NEPA), the Council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Council previously imposed Historic, Cultural, and Archaeological Resources Condition 2, which requires that prior to construction of the facility, the certificate holder would submit updates to the HPMP which includes NRHP eligibility determinations derived from the Section 106 review for new survey data from previously unsurveyed areas and based upon the final design of the facility. Based upon NRHP eligibility and agreed upon avoidance and mitigation measures from the Section 106 review, final avoidance and mitigation measures such as buffer distances, will be determined as an outcome of Section 106 and filed with Department prior to construction of the facility in that area.</u></p>
<p><u>John Williams</u> <u>07-18-2023</u> <u>Oral and</u> <u>Written</u> <u>Comments</u></p>	<p><u>Mr. Williams objects to the placement of three transmission towers on his property due to lack of survey data to inform their location including geotechnical and cultural surveys.</u></p>		<p><u>NA</u></p>	<p><u>Mr. Williams identified a concern with transmission tower (specifically ML 5/4) and its proximity to a potential fault – Peach Canyon Fault. This tower/tower location is not part of the changes proposed in RFA1, and was previously</u></p>

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Commenter	Comment Summary	Certificate Holder Response Summary	DPO Applicability (Section Reference)	Recommendations, Responses, and Location in Proposed Order
				<p>evaluated in the Final Order on the ASC¹⁸, where Council found, in part, that based on compliance with Structural Standard Condition 1 (PRE-SS-01), requiring a detailed boring plan and evaluation of fault sources, the certificate holder demonstrated an ability to design the facility in a manner that would avoid public health and safety risks from seismic hazards. Because there are no changes in RFA1 that would impact Council’s previous evaluation of Mr. Williams issues, the Department recommends that no changes be made to the proposed order.</p>
Susan Geer				
<p><u>Susan Geer 07-18-2023 Written Comments</u></p>	<p><u>Ms. Geer asserts that the statements in the DPO for RFA1 concluding that there may be limited public access are mischaracterizations, and instead asserts that Glass Hill Preserve is not advertised, but it certainly is not closed to the public. The SNA is open to research and education as spelled out in the Natural Areas agreement, as well as non-motorized nature-oriented activities such as hiking, birding, botanizing, and mountain biking on existing trails. For many years the X-Terra mountain bike race was held on the property annually, and those trails are locally popular. Furthermore, the property owner hosts Native American ghost dance ceremonies as part of addiction recovery programs.</u></p>	<p><u>To determine whether a recreational opportunity is important the Council considers: Any special designation or management of the location; The degree of demand; Outstanding or unusual qualities; Availability or rareness; Irreplaceability or irretrievability of the opportunity. ODOE weighed all five factors and determined that the Glass Hill Preserve/SNA is not an important recreational opportunity. While the DPO concluded that public access was not likely allowed, that was not the sole basis for determining that the Glass Hill SNA was not an important recreation site. In particular, the DPO also considered that the Glass Hill SNA was designated for the protection of habitat and not for recreation, the remote location, the lack of available recreation facilities at the Glass Hill SNA, that access for hunting or fishing may require permission from the landowner, and that other sites offer similar opportunities.</u></p> <p><u>Even considering Ms. Geer’s comments regarding access, it bears noting that Ms. Geer affirms that the Glass Hill SNA is not advertised to the public and it is not clear that the activities described in Ms. Geer’s comments are broadly available to the public or a more limited subset of individuals. Moreover, even assuming for the sake of argument that the Glass Hill Preserve/SNA were to be analyzed as an important recreation opportunity, the potential impacts to the Glass Hill Preserve/SNA associated with RFA1 would be less than significant because the RFA1 features near the Glass Hill</u></p>	<p><u>Section III.F., Protected Areas (referenced in comment letter); Section III.L., Recreation (referenced by certificate holder)</u></p>	<p><u>Department highlights that Ms. Geer’s comment letter discusses the description and impact assessment from the proposed road segment 1.6 miles away provided in DPO Section III.F., Protected Areas. However, the comments relate to recreational uses in the Preserve as well as opinions about impacts to the Preserve from the approved Morgan Lake Alternative approved in the Final Order on the ASC. Information in the record of the facility does not speak to the recreational and ceremonial uses identified by Ms. Geer. Stating that “The SNA is not advertised, but it certainly is not closed to the public. The SNA is open to research and education as spelled out in the Natural Areas agreement, as well as non-motorized nature oriented activities such as hiking, birding, botanizing, and mountain biking on existing trails,” does not provide facts about these uses nor does it support that the public is able to openly access the area for recreational uses.</u></p> <p><u>Nevertheless, because the status of open public access to the Preserve is unknown, the Department recommends changing the description of the SNA in Section III.F.1.a., Description of Newly Identified Protected Areas in RFA1 Analysis Area, and Section III.L.1.a, Recreational Opportunities within the Analysis Area, to indicate that open public access is unknown rather than likely restricted.</u></p>

¹⁸ B2HAPPDoc3-15 ASC 08b Exhibit H Geology ASC Part 2 2018-09-28. B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp 117-119.

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<u>Commenter</u>	<u>Comment Summary</u>	<u>Certificate Holder Response Summary</u>	<u>DPO Applicability (Section Reference)</u>	<u>Recommendations, Responses, and Location in Proposed Order</u>
		<p><u>Preserve/SNA are access roads located 1.6 miles away.30</u> <u>These access roads will introduce only mild visual contrast with the existing landscape</u></p>		<p><u>As the certificate holder points out, there are other criteria evaluated in the assessment of whether or not the Preserve is an important recreational opportunity. The Department maintains its recommendation in the proposed order that it would not be considered an important recreational opportunity because of potential lack of access, availability of similar areas for recreation, and lack of recreational infrastructure.</u></p> <p><u>Equally important, the Glass Hill Preserve/SNA is considered a Protected Area under the Council's Protected Area standard (OAR 345-022-0040). Under this standard an evaluation of visual impacts, construction traffic, noise, and water use is provided, which is an equivalent impact assessment to that done under the recreation standard. Proposed Order Table 18: <i>Visual Impact Summary for Roads and Routes Proposed in RFA1</i> within Viewshed, states that the site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1. Other potential impacts to the protected area from noise and traffic would be less than significant due to the distance from the road to the SNA and appropriately mitigated with existing site certificate conditions.</u></p>
<p><u>Susan Geer</u> <u>07-18-2023</u> <u>Written</u> <u>Comments</u></p>	<p><u>Approval of the Morgan Lake route signals a tragedy for state Protected Areas of Oregon, downgrading their ecological integrity and putting special status species further at risk. Allowing a route through the middle of an established conservation easement signals a huge loss for the conservation community even if they do not yet realize it.</u></p>	<p><u>The Council approved the Morgan Lake Alternative in its Final Order on certificate holder's ASC. Because the Council has already approved the Morgan Lake Alternative, this comment is outside the scope of RFA1.</u></p>	<p><u>N/A</u></p>	<p><u>No revisions to Proposed Order recommended. Impacts associated with the approved routes in the ASC, including the Morgan Lake Alternative, are outside the scope of RFA1.</u></p>
<p><u>Susan Geer</u> <u>07-18-2023</u> <u>Written</u> <u>Comments</u></p>	<p><u>Ms. Geer contends that a 1.6 mile road near Glass Hill Preserve would degrade the area.</u></p>			<p><u>No revisions to Proposed Order recommended. No proposed RFA1 facility components are proposed within the Glass Hill Preserve. Department clarified on the record at the EFSC Review of RFA1 DPO that the road segment (UN-236) that is the closest to Glass Hill Preserve is</u></p>

Table A-1: Summary of DPO Comments, Certificate Holder Responses, Council Review, and Department Recommendations (as represented in Proposed Order)

<u>Committer</u>	<u>Comment Summary</u>	<u>Certificate Holder Response Summary</u>	<u>DPO Applicability (Section Reference)</u>	<u>Recommendations, Responses, and Location in Proposed Order</u>
				<u>northwest of Glass Hill approximately 1.6 miles away, but the road segment is approximately 280 feet long, not 1.6 miles long.</u>

1
2
3

1 **II.C.3. Proposed Order**
2

3 ~~On July 19, 2023, Under OAR 345-027-0371(1), Council no later than 30 days after the Council~~
4 ~~has~~ reviewed the DPO and considered all comments received on the record of the DPO public
5 hearing under OAR 345-027-0367. The Department ~~must consider~~ any Council comments,
6 oral comments made at the public hearing, and all written comments received before the close
7 of the record of the public hearing in its drafting of the proposed order, agency consultation,
8 ~~and any Council comments.~~ Pursuant to OAR 345-027-0371(1), on August 7, 2023, the
9 Department ~~must issue~~ issued its proposed order recommending approval, ~~modification or~~
10 ~~denial~~ of the request for amendment to the site certificate. ~~The Department may issue the~~
11 ~~proposed order at a later date, but the Department must, no later than 30 days after the~~
12 ~~Council has reviewed the DPO and considered all comments received on the record of the~~
13 ~~public hearing, notify the certificate holder in writing of the reasons for the delay.~~ Concurrent
14 with issuing the proposed order, the Department ~~must send~~ issued notice of the proposed order
15 and opportunity to request a contested case to the Council’s general mailing list, ~~any the~~ special
16 mailing list for the facility, reviewing agencies, ~~as well as~~ property owners under OAR 345-027-
17 0360(1)(f), certificate holder, and all persons who commented in person or in writing on the
18 record of the DPO public hearing. ~~Under OAR 345-027-0371(4), on the same date the notice of~~
19 ~~proposed order, the Department must send a notice of the opportunity to request a contested~~
20 ~~case by mail or email to the certificate holder, and to all persons who commented in person or~~
21 ~~in writing on the record of the public hearing.~~
22

23 If there are no requests for a contested case proceeding, the Council, may adopt, modify or
24 reject the proposed order based on the considerations described under the Scope of Council
25 Review in OAR 345-027-0375. In a written order, the Council must either grant or deny issuance
26 of an amended site certificate.¹⁹
27

28 **II.C.4. Council Evaluation of Requests for Contested Case Proceeding**
29

30 Only those persons, including the certificate holder, who commented in person or in writing on
31 the record of the DPO public hearing (June 14 through July 18, 2023, ~~unless extended by~~
32 ~~Council~~) may request a contested case proceeding on the Proposed Order on Request for Site
33 Certificate Amendment 1. ~~proposed order for an amendment to the site certificate.~~
34

35 To properly raise an issue in a request for a contested case proceeding on the proposed order
36 for an amendment, the issue must be within the jurisdiction of the Council, and the person
37 must have raised the issue in person or in writing on the record of the DPO public hearing,
38 unless the Department did not follow the requirements of OAR 345-027-0367, or unless the
39 action recommended in the proposed order differs materially from the DPO, including any
40 recommended conditions of approval, in which case the person may raise only new issues
41 within the jurisdiction of the Council that are related to such differences. If a person has not
42 raised an issue at the DPO public hearing with sufficient specificity to afford the decision maker

¹⁹ OAR 345-027-0371(11).

1 an opportunity to respond to the issue, the Council may not grant a contested case proceeding
2 for that issue.²⁰ To have raised an issue with sufficient specificity, the person must have
3 presented facts at the public hearing that support that person’s position on the issue.²¹
4

5 Contested case requests must be submitted in writing and must be received by the Department
6 by September 8, 2023, which is a specified deadline that is at least 31 days from the date of
7 notice of the proposed order. Contested case requests must include:²²
8

- 9 • The person's name, mailing address and email address and any organization the person
10 represents;
- 11
- 12 • A short and plain statement of the issue or issues the person desires to raise in a
13 contested case proceeding;
- 14
- 15 • A statement that describes why the Council should find that the requester properly
16 raised each issue, including a specific reference to the person’s prior comments to
17 demonstrate that the person raised the specific issue or issues on the record of the
18 public hearing, if applicable;
- 19
- 20 • A statement that describes why the Council should determine that each identified issue
21 justifies a contested case, under the evaluation described in section (9) of this rule;
- 22
- 23 • Name and address of the person’s attorney, if any;
- 24

²⁰ OAR 345-027-0371(5).

²¹ OAR 345-015-0016(3). Council does not consider incorporations by reference to statements made by other persons, (whether they are comments on the DPO, raised by other commenters for this or past proceedings, comments on another agency proceeding, or other external references) to meet the sufficient specificity requirement under ORS 469.370(3) and OAR 345-0016(3). Blanket incorporations by reference do not afford the Department, Council or certificate holder an adequate opportunity to respond to each issue as required under ORS 469.370(3) because they typically do not specify which portion(s) of the other person(s) comments are to be incorporated or how those comments relate to any alleged shortcoming in the subject DPO. Attempts to incorporate by reference comments made regarding a matter being considered by another agency do not inform the Council, Department or applicant of any alleged error in the subject DPO sufficient to allow for a response. Further, incorporations by reference of another person’s comments on the subject DPO, no matter how specific, are procedurally inefficient because they could result in multiple persons presenting evidence, examining witnesses, etc. regarding the same issue in a contested case. Council also maintains that this position is consistent with the reasons why it is appropriate to limit the participation of persons seeking to participate in a contested case to the issues each properly raised in their respective DPO comments, which is summarized further in this order. Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO. EFSC review and approval of Meeting Minutes usually occurs 1-2 months after the applicable meeting.

²² OAR 345-027-0371(6).

- 1 • A statement of whether the person’s request to participate in a contested case is as a
2 party or a limited party, and if as a limited party, the precise area or areas in which
3 participation is sought;
4
- 5 • If the person seeks to protect a personal interest in the outcome of the proceeding, a
6 detailed statement of the person’s interest, economic or otherwise, and how such
7 interest may be affected by the results of the proceeding;
8
- 9 • If the person seeks to represent a public interest in the results of the proceeding, a
10 detailed statement of such public interest, the manner in which such public interest will
11 be affected by the results of the proceeding, and the person’s qualifications to
12 represent such public interest; and
13
- 14 • A statement of the reasons why others who commented on the record of the public
15 hearing cannot adequately represent the interest identified in subsections (h) or (i) of
16 this section.
17

18 Requests for contested case will be evaluated by Council at a Council meeting. Under OAR 345-
19 027-0371(7), before considering whether an issue justifies a contested case proceeding, the
20 Council must determine that the person requesting a contested case commented in person or
21 in writing on the record of the DPO public hearing and properly raised each issue included in
22 the request. To determine that a person properly raised each issue included in the request, the
23 Council must find that:

- 24 • The person making the contested case request raised the issue on the record of the DPO
25 public hearing described in OAR 345-027-0367 with sufficient specificity to afford the
26 Council, the Department, and the certificate holder an adequate opportunity to respond
27 to the issue;
28
- 29 • The Department did not follow the requirements of OAR 345-027-0367; or
30
- 31 • If the action recommended in the proposed order, including any recommended
32 conditions of approval, differs materially from the action recommended in the draft
33 proposed order, the contested case request identified new issues that are related to
34 such material differences.
35

36 Pursuant to OAR 345-027-0371(8), if the Council finds that the person requesting a contested
37 case failed to comment in person or in writing on the record of the DPO public hearing or failed
38 to properly raise any issue, as described above, the Council must deny that person’s contested
39 case request. If the Council finds that the person requesting a contested case commented in
40 person or in writing on the record of the DPO public hearing and properly raised one or more
41 issues, the Council’s determination of whether an issue justifies a contested case must be
42 limited to those issues the Council finds were properly raised.
43

1
2 After identifying the issues properly raised the Council must determine whether any properly
3 raised issue justifies a contested case proceeding on that issue. To determine that an issue
4 justifies a contested case proceeding, the Council must find that the request raises a significant
5 issue of fact or law that is reasonably likely to affect the Council’s determination whether the
6 facility, with the change proposed by the amendment, meets the applicable laws and Council
7 standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have
8 jurisdiction over the issue raised in the request, the Council must deny the request.²³
9

10 The Council must take one of the following actions when determining if a request identifying
11 one or more properly raised issues justifies a contested case proceeding:
12

- 13 1. If the Council finds that the request identifies one or more properly raised issues that
14 justify a contested case proceeding, the Council must conduct a contested case
15 proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-
16 0014 and 345-015-0018 to 345-015-0085. The parties to a contested case proceeding
17 must be limited to those persons who commented on the record of the public hearing
18 and who properly raised issues in their contested case request that the Council found
19 sufficient to justify a contested case, except that the certificate holder is an automatic
20 party to a contested case.²⁴ The issues a party to a contested case proceeding may
21 participate on must be limited to those issues that party properly raised in its contested
22 case request that the Council found sufficient to justify a contested case, except that the
23 certificate holder may participate on any issue the Council found sufficient to justify a
24 contested case proceeding.²⁵
25

²³ OAR 345-027-0371(9).

²⁴ During the contested case proceeding on the proposed order for ASC for the facility, the hearing officer permitted the Department, certificate holder, and petitioners to the contested case to provide written briefs regarding their positions on the matter or “full” or limited party status. Hearing officer concluded that petitioners for party status who met the eligibility requirements for standing in the contested case proceeding could participate as limited parties regarding the issues each properly raised in their respective comments on the DPO and petitions for party status in the contested case, but could not participate in the contested case on issues that others, but not they themselves had raised. The hearing officer based this conclusion upon ORS 469.370(5), OAR 345-015-0016(3), OAR 137-003-0005(8) and (9), OAR 137-003-0040, and OAR 345-015-0083. (B2HAPDoc219 Hearing Officer Order on Party Status and Issues OAH 2020-10-29, pp. 7-10). Council received written appeals of the Hearing Officer’s Contested Case Order and further briefed the issue concluding that, “-The Council finds that Hearing Officer’s designation of limited party status for petitioners granted standing in the contested case proceeding is affirmed for the reasons presented in the Order on Party Status.” (B2HAPDoc288 EFSC’s Order on Appeals of Hearing Officer Order on Party Status, Auth Reps and Issues 2020-11-25, p. 18). Limited parties again raised the issue of limited party in their petitions to appeal the Final Order on ASC to the Oregon Supreme Court. ‡ The Court agreed with the hearing officer and EFSC’s decisions, concluding that EFSC is expressly authorized to limit the participation of a party that it permitted to participate as a limited party – i.e., to treat a person as a limited party even if they requested full party status and that EFSC had authority to grant limited rather than full party status to petitioners STOP B2H and Irene Gilbert (among others). (B2HAPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, pp. 801-804, 815.

²⁵ OAR 345-027-0371(10)(a).

- 1 2. If the Council finds that the request identifies one or more properly raised issues that an
2 amendment to the proposed order, including modification to conditions, would settle in
3 a manner satisfactory to the Council, the Council may deny the request as to those
4 issues and direct the Department to amend the proposed order and send a notice of the
5 amended proposed order to the same persons who received notice of the proposed
6 order and opportunity to request a contested case.²⁶
7
- 8 3. If the Council finds that the request does not identify a properly raised issue that
9 justifies a contested case proceeding, the Council must deny the request. In a written
10 order denying the request, the Council must state the basis for the denial. The Council
11 must then adopt, modify or reject the proposed order based on the considerations
12 described under the Council’s Scope of Review in OAR-345-027-0375.²⁷
13

14 **II.C.5. Final Order**
15

16 The Council, may adopt, modify or reject the proposed order based on the considerations
17 described in OAR 345-027-0375. If the proposed order is adopted or adopted, with
18 modifications, the Council shall issue a final order granting issuance of an amended site
19 certificate. If the proposed order is denied, the Council shall issue a final order denying issuance
20 of the amended site certificate.
21

22 The Council’s final order is subject to judicial review by the Oregon Supreme Court as provided
23 in ORS 469.403.

24 **III. EVALUATION OF COUNCIL STANDARDS**
25

26 **III.A. GENERAL STANDARD OF REVIEW: OAR 345-022-0000**
27

28 *(1) To issue a site certificate for a proposed facility or to amend a site*
29 *certificate, the Council shall determine that the preponderance of evidence on*
30 *the record supports the following conclusions:*
31

32 *(a) The facility complies with the requirements of the Oregon Energy Facility*
33 *Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the*
34 *standards adopted by the Council pursuant to 469.501 or the overall public*
35 *benefits of the facility outweigh any adverse effects on a resource or interest*
36 *protected by the applicable standards the facility does not meet as described*
37 *in section (2);*
38

39 *(b) Except as provided in OAR 345-022-0030 for land use compliance and*
40 *except for those statutes and rules for which the decision on compliance has*

²⁶ OAR 345-027-0371(10)(b).

²⁷ OAR 345-027-0371(10)(c).

1 *been delegated by the federal government to a state agency other than the*
2 *Council, the facility complies with all other Oregon statutes and administrative*
3 *rules identified in the project order, as amended, as applicable to the issuance*
4 *of a site certificate for the proposed facility. If the Council finds that applicable*
5 *Oregon statutes and rules, other than those involving federally delegated*
6 *programs, would impose conflicting requirements, the Council shall resolve*
7 *the conflict consistent with the public interest. In resolving the conflict, the*
8 *Council cannot waive any applicable state statute.*

9
10 *(2) The Council may issue or amend a site certificate for a facility that does not*
11 *meet one or more of the applicable standards adopted under ORS 469.501 if*
12 *the Council determines that the overall public benefits of the facility outweigh*
13 *any adverse effects on a resource or interest protected by the applicable*
14 *standards the facility does not meet. The Council shall make this balancing*
15 *determination only when the applicant has shown that the proposed facility*
16 *cannot meet applicable Council standards or has shown, to the satisfaction of*
17 *the Council, that there is no reasonable way to meet the applicable Council*
18 *standards through mitigation or avoidance of any adverse effects on a*
19 *protected resource or interest. The applicant has the burden to show that the*
20 *overall public benefits outweigh any adverse effects on a resource or interest,*
21 *and the burden increases proportionately with the degree of adverse effects*
22 *on a resource or interest. The Council shall weigh overall public benefits and*
23 *any adverse effects on a resource or interest as follows:*

24
25 *(a) The Council shall evaluate any adverse effects on a resource or interest by*
26 *considering factors including, but not limited to, the following:*

27
28 *(A) The uniqueness and significance of the resource or interest that would be*
29 *affected;*

30
31 *(B) The degree to which current or future development may adversely affect*
32 *the resource or interest, if the proposed facility is not built;*

33
34 *(C) Proposed measures to reduce any adverse effects on a resource or interest*
35 *by avoidance of impacts;*

36
37 *(D) The magnitude of any anticipated adverse effects on a resource or interest,*
38 *taking into account any proposed mitigation.*

39
40 *(b) The Council shall evaluate overall public benefits by considering factors*
41 *including, but not limited to, the following:*

42
43 *(A) The overall environmental effects of the facility, considering both*
44 *beneficial and adverse environmental effects;*

1
2 *(B) The degree to which the proposed facility promotes Oregon energy policy*
3 *as described in ORS 469.010 by demonstrating or advancing new efficiency or*
4 *renewable technology or by expanding electric generating capacity from*
5 *renewable energy sources;*

6
7 *(C) Recommendations from any special advisory group designated by the*
8 *Council under ORS 469.480;*

9
10 *(D) Evidence that the benefits are likely to occur only if the proposed facility is*
11 *built;*

12
13 *(E) For facilities that are subject to a need standard, evidence underlying the*
14 *Council’s decision on compliance with the rules in OAR 345, Division 23, except*
15 *that the Council shall not find that need for a facility is sufficient, by itself, to*
16 *outweigh any adverse effects on a resource or interest affected by the*
17 *proposed facility.*

18
19 *(3) Notwithstanding section (2) of this rule, the Council shall not apply the*
20 *balancing determination to the following standards:*

21
22 *(a) The organizational expertise standard described in OAR 345-022-0010;*

23
24 *(b) The land use standard described in OAR 345-022-0030;*

25
26 *(c) The retirement and financial assurance standard described in OAR 345-*
27 *022-0050;*

28
29 *(d) The need standards described in OAR 345-023-0005;*

30
31 *(e) The standards for energy facilities that emit carbon dioxide described in*
32 *OAR 345-024-0500 through 345-024-0720;*

33
34 *(f) The protected areas standard described in OAR 345-022-0040, if the*
35 *statutes or administrative rules governing the management of the protected*
36 *area prohibit location of the proposed facility in that area; or*

37
38 *(g) The sage-grouse specific habitat mitigation requirements under the*
39 *Council’s fish and wildlife habitat standard described in OAR 345-022-0060,*
40 *except that the Council may apply the balancing determination to the*
41 *requirements of 635-140-0025(2)(a) and (b) for indirect impacts on core and*
42 *low density sage-grouse habitat, as defined in 635-140-0015, which are*
43 *caused by transmission lines or pipelines as defined in ORS 469.300(11)(a),*
44 *and by transmission lines or pipelines that are related or supporting facilities*

1 to an energy facility as defined in ORS 469.300(24), proposed to be sited
2 entirely outside of core and low density sage-grouse habitat.

3
4 (4) In making determinations regarding compliance with statutes, rules and
5 ordinances normally administered by other agencies or compliance with
6 requirements of the Council statutes if other agencies have special expertise,
7 the Department of Energy shall consult with such other agencies during the
8 notice of intent, site certificate application and site certificate amendment
9 processes. Nothing in these rules is intended to interfere with the state's
10 implementation of programs delegated to it by the federal government.²⁸

11
12 **III.A.1. Findings of Fact**

13
14 Pursuant to OAR 345-027-0375, consistent with Council’s General Standard of Review, in
15 making a decision to grant or deny issuance of an amended site certificate, the Council must
16 determine that the preponderance of evidence on the record supports that the proposed RFA1
17 site boundary additions complies with the applicable laws or Council standards that protect a
18 resource or interest that could be affected by the proposed change. Proof by a preponderance
19 of the evidence means “that the facts asserted are more probably true than false.”²⁹ Therefore,
20 to issue an amended site certificate, the Council must determine that the evidence on the
21 record, including information submitted to comply with Council-imposed site certificate
22 conditions, demonstrates it is more probable than not that the certificate holder will comply
23 with applicable standards.

24
25 When applying the preponderance of evidence test, Council takes into account the record as a
26 whole and information obtained or demonstrated through compliance with existing,
27 recommended amended or recommended new conditions.³⁰ For this order, the evidentiary
28 record relied upon to make recommended findings of fact and conclusions of law includes the
29 record of the *Final Order on the ASC* and RFA1. For several standards, where field surveys are
30 necessary to inform the presence of Council-protected resources and impacts, the
31 preponderance of evidence test is demonstrated through available data and future compliance
32 with previously imposed site certificate conditions. Field surveys are necessary under the
33 Council’s Fish and Wildlife Habitat standard, Threatened and Endangered Species standard,
34 Historic, Cultural and Archeological Resources, and the Oregon Department of State Land’s
35 (DSL) Removal-Fill Law. For RFA1, surveys for resources protected under these standards and
36 law were completed; however, complete survey coverage of the established survey area was
37 not completed due to limitations on obtaining landowner right-of-entry concurrent with
38 applicable survey timing constraints.

39

²⁸ OAR 345-022-0000, effective March 8, 2017.

²⁹ *Riley Hill Gen. Contractor, Inc. v. Tandy Corp.*, 303 Or. 390, 402, 737 P.2d 595 (1987).

³⁰ ORS 469.503(1)

- RFA1 Section 7.1.5.2, Table 7.1-11. Biological Resources Surveys indicates the type and scope of survey data complete for Fish and Wildlife habitat including extent of unsurveyed areas.
- Figures 7-17 and 7-18 indicate areas where pedestrian surveys for cultural resources were where site access was granted.
- RFA1 Section 5.3.3 indicates that wetland and water delineation surveys were conducted on 96 percent of the proposed RFA1 site boundary additions.

As evaluated in Section III.H *Fish and Wildlife Habitat*, Section III.I *Threatened and Endangered Species*, Section III.K *Historic, Cultural and Archeological Resources*, and Section III.R.2 *Removal-Fill Law*, Council previously imposed conditions requiring that, prior to construction, the certificate holder conduct surveys within any unsurveyed areas and either avoid or mitigate resources accordingly.³¹

The evaluation of requirements of the General Standard of Review (findings based on a preponderance of evidence on the record) are addressed in the recommended findings of facts and conclusions of law in the sections that follow. The facts and evidence in the record for RFA1, as well as the *Final Order on ASC*, are directly incorporated and or by reference in this order.

III.A.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing and recommended amended site certificate conditions described above, the Department recommends the Council find that the proposed RFA1 site boundary additions comply with all laws and Council complies with the requirements of ORS 469.300 to 469.570 and 469.590 to 469.619, the Council’s standards in OAR chapter 345, and all other Oregon statutes and administrative rules applicable to the issuance of an amended site certificate.

III.B. ORGANIZATIONAL EXPERTISE: OAR 345-022-0010

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated 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 and has demonstrated the ability to

³¹ Previously imposed conditions requiring preconstruction surveys include Fish and Wildlife Condition 15 (Condition PRE-FW-01); Fish and Wildlife Condition 16 (Condition PRE-FW-02); Historic, Cultural and Archeological Resources Condition 2 (Condition GEN-HC-02); and Removal-Fill Condition 1 (Condition PRE-RF-01). Avoidance and mitigation of any resources identified during these surveys is required under Fish and Wildlife Condition 17 (Condition PRE-FW-03); Historic, Cultural and Archeological Resources Condition 2 and 3 (Condition GEN-HC-02 and OPS-HC-01); and, Removal-Fill Condition 2, 3 and 6 (Conditions GEN-RF-01, GEN-RF-02 and GEN-RF-04)

1 *restore the site to a useful, non-hazardous condition. The Council may*
2 *consider the applicant’s experience, the applicant’s access to technical*
3 *expertise and the applicant’s past performance in constructing, operating and*
4 *retiring other facilities, including, but not limited to, the number and severity*
5 *of regulatory citations issued to the applicant.*

6
7 *(2) The Council may base its findings under section (1) on a rebuttable*
8 *presumption that an applicant has organizational, managerial and technical*
9 *expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and*
10 *proposes to design, construct and operate the facility according to that*
11 *program.*

12
13 *(3) If the applicant does not itself obtain a state or local government permit or*
14 *approval for which the Council would ordinarily determine compliance but*
15 *instead relies on a permit or approval issued to a third party, the Council, to*
16 *issue a site certificate, must find that the third party has, or has a reasonable*
17 *likelihood of obtaining, the necessary permit or approval, and that the*
18 *applicant has, or has a reasonable likelihood of entering into, a contractual or*
19 *other arrangement with the third party for access to the resource or service*
20 *secured by that permit or approval.*

21
22 *(4) If the applicant relies on a permit or approval issued to a third party and*
23 *the third party does not have the necessary permit or approval at the time the*
24 *Council issues the site certificate, the Council may issue the site certificate*
25 *subject to the condition that the certificate holder shall not commence*
26 *construction or operation as appropriate until the third party has obtained the*
27 *necessary permit or approval and the applicant has a contract or other*
28 *arrangement for access to the resource or service secured by that permit or*
29 *approval.*³²

30
31 **III.B.1. Findings of Fact**

32
33 The proposed RFA1 site boundary additions will be located in the same vicinity as the approved
34 site boundary and does not propose any new or different types of technology or facility
35 infrastructure. Based on the recommended findings of fact in this order, there are not
36 substantively new or different resources or impacts resulting from the proposed RFA1 site
37 boundary additions that would necessitate a different level of organizational expertise as
38 evaluated in the *Final Order on the ASC*. For these reasons, the Department recommends
39 Council rely on its findings and conditions in the *Final Order on ASC*, which are incorporated
40 below.

41
42 ***Organizational Expertise of Certificate Holder***

³² OAR 345-022-0010, effective April 3, 2002.

1
2 The certificate holder is an investor-owned electric utility that serves over 530,000 customers
3 within a service territory of approximately 24,000 miles in southern Idaho and eastern Oregon.
4 Its power supply system currently includes 4,868 miles of transmission lines, including 692 miles
5 in Oregon. It also operates 305 transmission and other stations, and operates and maintains
6 27,072 miles of distribution lines, 2,212 miles of which are located in Oregon.³³
7

8 Certificate holder’s experience in constructing high-voltage transmission lines, since 2000,
9 includes 5 lines, extending 2 to 70 miles. Certificate holder’s experience in operating high-
10 voltage transmission lines includes current operation and maintenance of approximately 692
11 miles of transmission lines in Oregon.
12

13 Engineering, design, procurement, and construction activities related to the facility will be
14 completed by third-party contractors. Facility design, construction and operation will be
15 required to comply with National Electric Safety Code (NESC), Federal Energy Regulatory
16 Commission (FERC), North American Electric Reliability Corporation (NERC), and Western
17 Electricity Coordinating Council (WECC) standards.
18

19 Facility operations and maintenance will comply with a Transmission Maintenance and
20 Inspection Plan (TMIP), which is reviewed annually, and is designed to achieve compliance with
21 all applicable Oregon Public Utility Commission (OPUC) rules. Under the TMIP, three types of
22 line maintenance patrols are conducted: routine line patrols/inspections, unscheduled
23 emergency line patrols, and aerial vegetation patrols.³⁴ The routine line patrols include a
24 detailed visual inspection of the entire line and are conducted at least once per year on all lines
25 included in a WECC transfer path in the bulk electric system. These inspections are conducted
26 from either the ground or air and are designed to ensure the integrity of the system by
27 identifying obvious line threatening defects. Emergency line patrols are performed in response
28 to any unexplained system outage or interruption, or whenever requested by a dispatcher, to
29 identify major structural failures or issues. These typically would not involve inspection of the
30 entire line, but only the portion of a line where there is an indication or report of a possible
31 problem. Finally, a transmission utility arborist conducts aerial vegetation patrols to identify
32 and manage vegetation encroachments that threaten the transmission lines. The arborist
33 normally completes the aerial vegetation patrol alongside the line patrolman during routine
34 line patrols/inspections.
35

36 In addition to the cyclical inspection cycles described above, Transmission Patrolmen patrol and
37 inspect transmission lines at a minimum once a year to identify any transmission defects and
38 any vegetation hazards that may develop between vegetation clearing cycles. A comprehensive
39 10-year maintenance inspection on all of its transmission lines consistent with its TMIP and
40 includes detailed visual inspections of all transmission line components. The data collected

³³ B2HAPPDoc3-10 ASC 04_Exhibit D_Organization_ASC 2018-09-28, Section 3.1.

³⁴ B2HAPPDoc3-10 ASC 04_Exhibit D_Organization_ASC 2018-09-28, Section 3.1.3.

1 from these inspections would be compiled and evaluated, and identified issues are addressed
2 through general maintenance.

3
4 Council previously imposed conditions to ensure that the above-referenced facts are realized
5 during construction and operations:

- 6
7 • Organizational Expertise Condition 2 (Condition GEN-OE-01) requires that, prior to
8 construction, the certificate holder provide to the Department and each affected county
9 the identify and qualifications of its construction contractors. The qualifications must
10 demonstrate that the contractors have substantial experience in designing, engineering
11 and constructing similar types of facilities (roads, high-voltage transmission lines,
12 switching station).
- 13 • Organizational Expertise Condition 3 (Condition PRE-OE-01) requires that, prior to
14 construction, the certificate holder provide to the Department the identify and
15 qualifications of its construction managers, where the qualifications must demonstrate
16 that the managers have experience in implementing major construction project(s) in
17 compliance with numerous, complex regulatory and permit requirements.
- 18 • Organizational Expertise Condition 4 (Condition PRE-OE-02) requires that the certificate
19 holder contractually require its construction contractors to comply with the terms and
20 conditions of the site certificate.
- 21 • Organizational Expertise Condition 1 (OPR-OE-01) requires that the certificate holder,
22 during operations, implement and adhere to the requirements of the TMIP; and, report
23 to the Department on the status and results of inspections and corrective actions
24 implemented during the reporting year.

25 26 *Mitigation Experience*

27
28 Mitigation is required under numerous site certificate conditions to mitigate for direct and
29 indirect impacts of the facility to resources protected under a Council standard. The certificate
30 holder, as an electric utility, employs almost 100 full-time staff biologists in its Environmental
31 Affairs Department as well as two full-time staff who track, manage, and document compliance
32 with FERC license requirements. The certificate holder's relevant mitigation experience includes
33 implementation of a Riparian Habitat Acquisition Plan for a 360-acre property; a Visual
34 Resource Management Plan which provides visual resources protection, mitigation, and
35 enhancement measures; and a Historic Properties Management Plan which implements an
36 agreement among certificate holder, the State of Idaho, federal agencies, and Tribal
37 governments to identify and protect cultural resources.

38 39 *Demonstrated ability to restore the site to a useful, non-hazardous condition*

40
41 The evaluation of the certificate holder's ability to restore the site to a useful, non-hazardous
42 condition is presented in Section III.G *Retirement and Financial Assurance* of this order.

1
2 **III.B.2. Conclusions of Law**
3

4 Based on the above findings of fact, and subject to compliance with the existing conditions
5 described above and in the site certificate, the Department recommends Council find the
6 certificate holder would continue to have the organizational expertise to construct, operate and
7 retire the portions of the facility added to the site boundary in RFA1 in compliance with Council
8 standards and conditions of the site certificate, and in a manner that protects public health and
9 safety and has demonstrated the ability to restore the site to a useful, non-hazardous
10 condition.
11

12 **III.C. STRUCTURAL STANDARD: OAR 345-022-0020**
13

14 *(1) Except for facilities described in sections (2) and (3), to issue a site*
15 *certificate, the Council must find that:*

16
17 *(a) The applicant, through appropriate site-specific study, has adequately*
18 *characterized the seismic hazard risk of the site; and*

19
20 *(b) The applicant can design, engineer, and construct the facility to avoid*
21 *dangers to human safety and the environment presented by seismic hazards*
22 *affecting the site, as identified in subsection (1)(a);*

23
24 *(c) The applicant, through appropriate site-specific study, has adequately*
25 *characterized the potential geological and soils hazards of the site and its*
26 *vicinity that could, in the absence of a seismic event, adversely affect, or be*
27 *aggravated by, the construction and operation of the proposed facility; and*
28

29 *(d) The applicant can design, engineer and construct the facility to avoid*
30 *dangers to human safety and the environment presented by the hazards*
31 *identified in subsection (c).*

32
33 *(2) The Council may not impose the Structural Standard in section (1) to*
34 *approve or deny an application for an energy facility that would produce*
35 *power from wind, solar or geothermal energy. However, the Council may, to*
36 *the extent it determines appropriate, apply the requirements of section (1) to*
37 *impose conditions on a site certificate issued for such a facility.*

38
39 *(3) The Council may not impose the Structural Standard in section (1) to deny*
40 *an application for a special criteria facility under OAR 345-015-0310. However,*
41 *the Council may, to the extent it determines appropriate, apply the*

1 *requirements of section (1) to impose conditions on a site certificate issued for*
2 *such a facility.*³⁵

3
4 **III.C.1. Findings of Fact**

5
6 The analysis area for the Structural Standard includes the area within the proposed RFA1 site
7 boundary additions, or approximately 1,036 acres extending across portions of Morrow,
8 Umatilla, Union, Baker and Malheur counties. The proposed RFA1 site boundary additions will
9 be located in the same vicinity as the approved site boundary; therefore, the seismic and non-
10 seismic hazards evaluated in the *Final Order on the ASC* will not significantly differ for the
11 proposed RFA1 site boundary additions. For this reason, the Department recommends Council
12 rely on its findings and conditions³⁶ in the *Final Order on ASC*, which are incorporated and
13 applied to the RFA1 analysis area below.

14
15 *III.C.1.a Seismic Hazard Risk at Site*

16
17 *Earthquake and Seismic Hazards*

18
19 Earthquake and seismic hazards were evaluated in the *Final Order on the ASC*. The U.S.
20 Geological Survey (USGS) Earthquake Search Database, the National Geophysical Data Center,
21 and the Pacific Northwest Seismic Network were evaluated to identify historic earthquakes
22 within the analysis area. Three potential types of earthquake sources exist within the analysis
23 area: crustal, intraslab, and interplate events. Of these, the Cascadia Subduction Zone (CSZ)
24 interplate events have the potential to produce the largest magnitude earthquake, up to 9.0
25 magnitude. However, this earthquake source is located at a distance of 280 miles or more from
26 the analysis area.

27
28 Seismic hazards from earthquake events include seismic shaking or ground motion, ground
29 failure, landslides, liquefaction, subsidence and lateral spreading, which are described below.

30
31 *Seismic Shaking/Ground Motion*

32
33 Seismic shaking from a CSZ interplate event would attenuate over the approximately 280-mile
34 distance to the analysis area and would therefore not represent the most significant
35 earthquake hazard within the vicinity of the proposed RFA1 site boundary additions. Crustal
36 faults, which typically produce earthquakes of a maximum magnitude of 7.0, are located in
37 much closer proximity to the facility site and therefore represent the most significant seismic

³⁵ OAR 345-022-0020, effective October 18, 2017, as amended by minor correction filed May 28, 2019.

³⁶ In [Section III.D., Soil Protection in this](#) order, the Department recommends Council amend Structural Standard Condition 1 (Condition PRE-SS-01) and Soil Protection Condition 4 (Condition GEN-SP-04) to support effective implementation and enforcement.

1 hazard to the facility.³⁷ Given the maximum magnitude of historic earthquakes in the vicinity of
2 the proposed RFA1 site boundary additions, the facility seismic design will be based on
3 earthquake magnitudes of 6.0 to 6.2.³⁸ Earthquake risk is greatest in the northern portion of the
4 proposed RFA1 site boundary additions (in Morrow County).³⁹
5

6 A preliminary evaluation of the estimated probabilistic peak ground acceleration (PGA) for a
7 500- and 5,000-year return period was included in ASC Exhibit H; these data were used to
8 assess geo-seismic hazards such as seismic slope stability and liquefaction. These preliminary
9 evaluations are based on the USGS 2002 and 2014 National Seismic Hazard Maps. The USGS
10 developed these maps using a probabilistic seismic hazard analysis (PSHA) that considered
11 multiple specific sources and regional seismicity to predict the probability of an earthquake of a
12 given ground motion occurring anywhere in a given area within a given return period.⁴⁰
13

14 The 500-year return period PGA values within the analysis area range from 0.074g near
15 Boardman, Oregon to 0.045g near Hemingway, Idaho. The PGA values for the 5,000-year return
16 period within the analysis area range from 0.261g to 0.169g.⁴¹ The 2,500-year return period
17 PGA values within the analysis area range from 0.185g to 0.117g. For the same return period,
18 the short period (0.2-second) spectral response acceleration values within the analysis area
19 range from 0.416g to 0.262g, and the long period (1.0-second) spectral response acceleration
20 values range from 0.137g to 0.082g.⁴²
21

22 The assumed site class with the proposed RFA1 site boundary additions is between site class B
23 and site class C (site class B/C), which is a soft rock profile, and used ground motion parameters
24 that correspond to this profile. Site class is used to inform foundation and structure design.
25

26 *Ground Failure*

27

28 Seismic hazards from earthquake events could include ground failure and fault displacement
29 when an active fault ruptures. The following 8 faults were identified within a five-mile radius of
30 the analysis area: the Hite Fault System, Thorne Hollow Section; Hite Fault System, Agency
31 Section; West Grande Ronde Valley Fault Zone; Unnamed East Baker Valley Faults; West Baker
32 Valley Faults; South Grande Ronde Valley Fault Zone; Cottonwood Mountain Fault; and, Faults
33 Near Owyhee Dam.
34

35 *Landslides*

³⁷ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.7.3 and B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Attachment H-1, Section 4.2.

³⁸ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.7.4.

³⁹ The applicant performed a preliminary seismic risk assessment from a review of earthquake hazard zones included in Federal Emergency Management Agency data, prepared for the U.S. Department of Transportation, Office of Pipeline Safety. B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.7.6.

⁴⁰ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Attachment H-1, Section 4.1.

⁴¹ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Attachment H-1, Section 4.1.

⁴² B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Attachment H-1, Section 4.1.

1
2 Seismic hazards from earthquake events include landslides. Historic, mapped landslides were
3 evaluated in the *Final Order on the ASC*, which relied upon:
4

- 5 • Review of GIS files compiled by Oregon Department of Geology and Mineral Industries
6 (DOGAMI) in the Statewide Landslide Information Database for Oregon (SLIDO),
7 version 3.4 (Burns and Watzig, 2017); the review included landslides within a one-mile
8 wide route corridor; initial work by Shaw utilized SLIDO, version 2 (Burns and others,
9 2011);
- 10 • Review of existing geologic maps, including Engineering Geology of the La Grande
11 Area, Union County, Oregon, by Schlicker and Deacon (1971); the maps were compiled
12 and geo-referenced in GIS along the alignment to confirm the location of each SLIDO
13 landslide along the route and to check that each mapped landslide was included in the
14 SLIDO database;
- 15 • Site reconnaissance (by Shaw) along portions of the original alignment, conducted on
16 October 26-28 and November 15-18, 2011;
- 17 • Site reconnaissance (by Shannon & Wilson) along portions of new alignment alternatives
18 and select alignment changes, conducted July 30 through August 2, 2012, and October
19 16-18, 2013;
- 20 • Review of aerial photography (Shaw reviewed 1:24,000 scale aerial photographs
21 provided by 3Di, LLC, of Eugene, Oregon (3Di), and the ESRI Microsoft Virtual Earth
22 Exhibit H - Attachment H-1 24-1-03820-006 E-2 layer in GIS; Shannon & Wilson reviewed
23 aerial photographs from both ESRI and Google Earth);
- 24 • Review of Digital Terrain Models (DTMs) along one-mile-wide route corridors; and
- 25 • DOGAMI LiDAR Data Viewer (relevant LiDAR data was only available for portions of
26 the Meacham Lake, Huron, Kamela SE, Hilgard, LaGrande SE, Glass Hill, Craig
27 Mountain, North Powder, Telocaset, Baker, Virtue Flat, and Owyhee Dam quadrangles);
28 No LiDAR data was available in Idaho⁴³

29
30 Based on a review of the above-described information, the certificate holder's geotechnical
31 consultant, Shannon & Wilson, mapped landslides within one mile of analysis area. Using this
32 previously mapped landslide data, facility components within the proposed RFA1 site boundary
33 additions would be in or near 13 potential landslide or geologic hazard areas. This includes the
34 Little Juniper Canyon and True Blue Gulch transmission line route alternatives; and proposed
35 access road changes in Union, Baker and Malheur counties.⁴⁴ The location of the proposed RFA1
36 site boundary additions and landslide/geologic hazard areas are presented in RFA1 Figure 7-1
37 Map 1 (SLIDO 43); Figure 7-2 Maps 2-4 (SLIDO 127, 158, 159, 1110, 1112); Figure 7-2 Map 16
38 (SLIDO 2281); Figure 7-2 Map 26 (SLIDO 1711), 33 (SLIDO 2027, 2030), 34 (SLIDO 2030, 2034),
39 (SLIDO 2069). The preliminary evaluation and results of the potential risks from these

⁴³ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.7.6 and Attachment H-1 (Section 5.1.1).

⁴⁴ B2HAMD1 Request for Amendment 1 2023-06-08. Section 7.1.1, p. 51; B2HAMD1 Request for Amendment 1 2023-06-08. Figure 7-1 Map 1; Figure 7-2 Maps 2-4; Figure 7-2 Map 16; Figure 7-2 Map 26, 33, 34, 39.

1 mapped geologic hazards to the proposed RFA1 site boundary additions are presented in Table
 2 8 below.
 3

**Table 8: Geologic Hazards within the Proposed RFA1 Site Boundary Additions
 Analysis Area**

Proposed RFA1 Component	Mapped Landslide Reference	Evaluation	Certificate Holder’s Pre-geotech Investigation Results
Little Juniper Canyon alternative	SLIDO 43	2011 site visit; 2022 reconnaissance visit	Identified as an alluvial fan and not a landslide; no surficial features indicative of landslide or geologic hazard observed (RFA1 Figure 7-1 Map 1)
True Blue Gulch alternative	SLIDO 127, 158, 159, 1110, 1112	Desktop mapping	Talus-colluvium with alluvial fans; not a landslide (RFA1 Figure 7-2 Maps 2-4)
Union County access roads	SLIDO 2281	Desktop mapping	It is a landslide, but located over 4,000 feet away (RFA1 Figure 7-2 Map 16)
Baker County access roads	SLIDO 1711	Review of aerial imagery and light detection and ranging; 2021 reconnaissance visit	Lack of sharp head scarps and landslide features indicates likely ancient landslide (RFA1 Figure 7-2 Map 26)
Malheur County access roads	SLIDO 2027, 2030	2011 site visit; 2021 reconnaissance visit; review of aerial imagery and light detection and ranging	Access roads would be in the landslide area; landslide area considered stable (RFA1 Figure 7-2 Map 33)
	SLIDO 2030, 2034	2021 reconnaissance visit	Lack of surficial features (RFA1 Figure 7-2 Map 34)
	SLIDO 2069	Desktop mapping	Access roads are in a gentle sloping area but 0.4-mile away from mapped landslide (RFA1 Figure 7-2 Map 39)

4
 5 *Liquefaction and Lateral Spreading*
 6

7 Seismic hazards from earthquake events include liquefaction and lateral spreading. Liquefaction
 8 refers to the saturation and cohesion of soils causing these soils to temporarily lose their
 9 strength, resulting from intense and prolonged ground shaking and seismic activity. Areas with
 10 a shallow water table (within 50 feet of the surface) and thick, unconsolidated sediments are
 11 the most susceptible to liquefaction in the event of ground shaking. The majority of the analysis

1 area has a low susceptibility to liquefaction because it mostly consists of relatively stable terrain
2 with shallow bedrock and deep groundwater. Seismic activity also has the potential to cause
3 lateral spreading, which is the permanent horizontal movement of liquefiable soil. Lateral
4 spreading during seismic events is most likely to occur on gradual slopes or on flat sites with
5 liquefiable soils.

6

7 *Subsidence*

8

9 Subsidence is the sinking or the gradual downward settlement of the land surface, and is often
10 related to groundwater drawdown, compaction, tectonic movements, mining, or explosive
11 activity. Seismic activity in the analysis area could lead to the settling of sediment and could
12 also exacerbate potential subsidence associated with groundwater withdrawal in more
13 populous regions. No historical cases of subsidence in the analysis area have been identified,
14 and the majority of the analysis area has a low susceptibility to subsidence.

15

16 *III.C.1.b Non-seismic Geologic and Soils Hazards*

17

18 Non-seismic hazards include mass-wasting and landslides, flooding, and erosion.
19 Landslides are a subset of mass wasting events, which describes processes that include the
20 downslope movement of masses of soil and rock. As previously discussed, seismic events have
21 the potential to result in landslides, but non-seismic factors may also trigger landslides (e.g.,
22 from heavy precipitation events at unstable areas). Mapped landslides within one mile of the
23 analysis area are presented in ASC Exhibit H, Attachment H-1, Appendix E.⁴⁵

24

25 *Mass-wasting and Landslides*

26

27 Mass wasting is a generic term for landslides, rockslides, rockfall, debris flows, soil creep, and
28 other processes that include the downslope movement of masses of soil and rock. Mass
29 wasting can be initiated by precipitation events, sometimes in conjunction with land use. Slope
30 stability is a function of moisture content, slope gradient, rock and soil type, slope aspect,
31 vegetation, seismic conditions and ground-disturbing activities.

32

33 *Flooding*

34

35 Using data from the 2017 Federal Emergency Management Agency (FEMA) National Flood
36 Hazard Layer and the 2015 DOGAMI Statewide Flood Hazard Database for Oregon – FEMA
37 Flood Insurance Study inundation zones, the 100-year flood zone was overlain with the facility
38 temporary and permanent disturbance areas. Portions of the proposed RFA1 site boundary

⁴⁵ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.7.6 and Attachment H-1 (Section 5.1.1).

1 additions would be located in the 100-year flood zone, including areas along Little Juniper Creek
2 in Morrow County and access road improvements along the Malheur River in Malheur County.⁴⁶

3
4 *Erosion*

5
6 Soils most susceptible to erosion by wind and water are typically non-cohesive soils with low
7 infiltration rates, residing on moderate to steep slopes, and soils that are sparsely vegetated.⁴⁷
8 Erosion potential within the analysis area is based on three factors: soil-erodibility (K) factor,
9 wind erodibility, and slope. The potential for soil erosion by wind was evaluated using NRCS
10 wind erodibility group data, which are based on the texture of the surface layer, the size and
11 durability of surface clods, rock fragments, organic matter, and a calcareous reaction. Soil
12 moisture and frozen soil layers also influence wind erosion. Construction activities that could
13 expose soils to wind erosion include any surface disturbance (e.g., road construction and
14 improvements, vegetation clearing). In general, steep slopes possess a greater potential for
15 erosion by water or mass movements than flat areas. Areas containing greater than 25 percent
16 slope were considered to have greater erosion potential.

17
18 *Expansive Soils*

19
20 Expansive soils, which swell when exposed to moisture and shrink when dried, may impact
21 structure foundations.

22
23 *Groundwater Hazards*

24
25 Groundwater may exacerbate slope instability, and may require hydrogeological mitigation
26 (such as surface drainage, shallow drainage, and deep drainage) to reduce the soil's water
27 content. Groundwater can also impact construction, particularly where excavations extend
28 below the water table. If shaft foundations for transmission line towers extend below the water
29 table in granular soils, casing and/or slurry may be necessary to prevent soil heave and
30 maintain shaft integrity.

31
32 *Corrosive Subsurface Conditions*

33
34 Corrosive soils can damage the metallic and concrete components of subsurface utilities and
35 structures. Based on NRCS Soil Survey Geographic Database, the susceptibility of concrete to
36 corrosion when in contact with the on-site surficial soils is expected to be low in most areas,
37 and susceptibility of uncoated steel to corrosion when in contact with the onsite surficial soils is
38 expected to be moderate to high. Metal materials may be protected through the addition of
39 protective coatings or by increasing the metal thickness.

40

⁴⁶ B2HAMD1 RFA1 2023-06-08. Section 7.1.3.1 Table 7.1-5, pg. 58. B2HAMD1 RFA1 2023-06-08. Section 7.1.3.5
Table 7.1-9, p. 76.

⁴⁷ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.8.3.

1 The Department recommends that Council finds that the above facts represent an adequate
2 characterization of the seismic and non-seismic risks within the analysis area.

3
4 *III.C.1.c Design, Engineer and Construct Facility to Avoid Dangers to Human Safety and the*
5 *Environment from Potential Seismic Hazards and non-Seismic Hazards*
6

7 The Structural Standard requires the Council to find that, based on an adequate
8 characterization of the seismic and non-seismic risks of the site, that the certificate holder
9 demonstrates an ability to design, engineer and construct the facility to avoid potential seismic
10 hazards (i.e. ground motion, ground failure, fault displacement, landslides, liquefaction, lateral
11 spreading, and subsidence) and non-seismic hazards within the surrounding area.

12
13 *Ground Failure and Fault Displacement*
14

15 The Quaternary faults within the surrounding area should be considered during final facility
16 design with regards to their potential to result in ground failure and fault displacement at or
17 near the proposed alignment. Ground failure including landslide, lateral spreading, liquefaction,
18 and surface rupture or settlement will be evaluated once ground accelerations and subsurface
19 conditions are known (following the pre-construction, site-specific geologic and geotechnical
20 investigations). Council previously imposed Structural Standard Condition 1 (Condition PRE-SS-
21 01) requiring that the certificate holder conduct a pre-construction site-specific geological and
22 geotechnical investigation report to, in part, describe potentially active faults that may affect
23 the facility, their potential risk to the facility, and measures to mitigate the identified hazards.
24

25 *Landslides*
26

27 Landslides could potentially affect the stability of the proposed tower foundations or associated
28 work areas. Facility structures would be located with sufficient setback from slopes to mitigate
29 the potential for slope instability, and where structures cannot be moved or realigned,
30 mitigation techniques may include modification of slope geometry (grading or removing soils),
31 hydrogeological modification (drainage to reduce the soil's water content), and slope
32 reinforcement methods.⁴⁸ Council previously imposed Structural Standard Condition 1
33 (Condition PRE-SS-01) requiring that the certificate holder conduct a pre-construction site-
34 specific geological and geotechnical investigation report that, in part, will use agency approved
35 investigation methods such as LiDAR or field survey investigation of the site boundary to assess
36 the potential for slope instability and landslide hazards, and to identify measures to mitigate
37 the identified hazards.
38

39 *Liquefaction and Lateral Spreading*
40

41 Prior to the development of final engineering design, liquefaction studies will be conducted for
42 susceptible areas, including areas that cross or approach rivers and areas where thick

⁴⁸ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.9.2.1.

1 unconsolidated sediments are encountered in the field. Additional evaluation of liquefaction
2 also may be needed as the final alignment and tower locations are chosen. The geotechnical
3 engineer will recommend additional exploration and/or analysis as applicable to assess
4 liquefaction hazards in the geotechnical design report for the transmission line.

5
6 In particular, the evaluation of liquefaction hazards will include susceptible areas, such as areas
7 with thick unconsolidated sediments and areas that cross or approach rivers.⁴⁹ Council
8 previously imposed Structural Standard Condition 1 (Condition PRE-SS-01) requiring that the
9 pre-construction site-specific geological and geotechnical investigation report assess potential
10 liquefaction hazards and to identify measures to mitigate the identified hazards.

11
12 The pre-construction, site-specific evaluation of liquefaction hazards will evaluate if lateral
13 spreading is an additional hazard for areas susceptible to liquefaction.⁵⁰ Structural Standard
14 Condition 1 (Condition PRE-SS-01) requires the pre-construction site-specific geological and
15 geotechnical investigation report to, in part, assess potential lateral spreading hazards and to
16 identify measures to mitigate the identified hazards.

17 *Subsidence*

18
19
20 Seismic activity has the potential to cause subsidence, which is the sinking or gradual
21 downward settlement of the land surface. If the geotechnical investigation identifies any
22 subsidence-prone areas, the facility design and siting of the transmission line will avoid
23 subsidence hazards.⁵¹

24
25 Structural Standard Condition 1 (Condition PRE-SS-01) requires the pre-construction site-
26 specific geological and geotechnical investigation report to include a geotechnical field
27 exploration program, laboratory testing, and detailed site reconnaissance to assess seismic risk.
28 The Council requires the investigation to be designed and conducted by a professional engineer
29 or geologist licensed in Oregon, to apply relevant expertise in issues and conditions of the State.
30 The principal mitigation strategy for surface rupture hazards is modification of structure
31 locations. All designs and subsequent construction requirements would be modified based on
32 the site-specific characterization of seismic, geologic, and soil hazards. Some specific mitigation
33 techniques for earthquake-induced landslide and liquefaction hazards are presented below.

34
35 Council previously imposed numerous conditions designed to ensure compliance with the
36 Structural standard.

- 37
38
 - Structural Standard Condition 1 (Condition PRE-SS-01) requires that, prior to
39 construction, the certificate holder conduct a site-specific, geotechnical investigation
40 within all areas where facility structures would be located to further evaluate risks and

⁴⁹ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.7.6.

⁵⁰ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.7.6.

⁵¹ B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, Section 3.7.6.

1 hazards from geologic conditions, faults, slope instability/landslide hazards, liquefaction,
2 soil expansion, groundwater, corrosive soils and flood risk.⁵²

- 3 • Structural Standard Condition 3 (Condition GEN-SS-02) requires that the facility be
4 designed to avoid seismic hazards.
- 5 • Structural Standard Condition 4 (Condition GEN-SS-03) requires that, if site
6 investigations or trenching identify foundation rocks that differ significantly from those
7 described in the ASC, the certificate holder notify and consult with the Department and
8 DOGAMI on appropriate corrective or mitigation actions.
- 9 • Structural Standard Condition 5 (Condition GEN-SS-04) requires that, if shear zones,
10 artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site,
11 the certificate holder notify and consult with the Department and DOGAMI on
12 appropriate corrective or mitigation actions.
- 13 • Structural Standard Condition 2 (Condition GEN-SS-01) requires that the certificate
14 holder design facility structures in accordance with the versions of the Oregon Structural
15 Specialty Code, International Building Code, and local building codes in effect at the time
16 of construction.
- 17 • Siting Standards for Transmission Line Condition 3 (Condition GEN-TL-02) requires that
18 that the certificate holder design facility structures in accordance with the National
19 Electrical Safety Code in effect at the time of construction.
- 20 • Soil Protection Condition 1 (Condition GEN-SP-01) requires development and adherence
21 to an Erosion and Sediment Control Plan, governed under the DEQ-issued 1200-C
22 General Construction Permit.

23 24 **III.C.2. Conclusions of Law**

25
26 Based on the foregoing analysis, and subject to compliance with the existing and recommended
27 amended site certificate conditions⁵³, the Department recommends that the Council find the
28 certificate holder has adequately characterized potential seismic and geologic hazards within
29 the proposed RFA1 site boundary additions and that the certificate holder can design, engineer
30 and construct the proposed RFA1 site boundary additions to avoid dangers to human safety and
31 the environment presented by those hazards.

32 33 **III.D. SOIL PROTECTION: OAR 345-022-0022**

34
35 *To issue a site certificate, the Council must find that the design, construction*
36 *and operation of the facility, taking into account mitigation, are not likely to*
37 *result in a significant adverse impact to soils including, but not limited to,*

⁵² Council previously imposed Land Use Condition 1 (Condition GEN-LU-01) and Land Use Condition 11 (Condition GEN-LU-08) requiring, in part, that flood plain development permits be obtained from Morrow and Malheur counties, prior to any development within a flood plain.

⁵³ See recommended amended Soil Protection Condition 1 (GEN-SP-01) and Structural Standard Condition 1 (Condition PRE-SS-01) in Section III.D *Soil Protection* of this order.

erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.⁵⁴

III.D.1. Findings of Fact

The analysis area for the Soil Protection standard includes the area within the proposed RFA1 site boundary additions, or approximately 1,036 acres extending across portions of Morrow, Umatilla, Union, Baker and Malheur counties. Within the analysis area, approximately 187 acres would be disturbed during construction activities.⁵⁵

Of the 187 acres impacted, 129 acres would be restored and 58 acres would be permanently impacted by siting of facility infrastructure including 500 kV transmission towers and new and substantially modified access roads.⁵⁶ The zones crossed, land cover type and extent of high value farmland soils within the proposed RFA1 site boundary additions, by county, are presented in Table 9 below.

Table 9: Land Use and Cover Types within Proposed RFA1 Site Boundary Additions

County	Acres Within Analysis Area	High Value Farmland Soils within Analysis Area	Acres Impacted	Zone(s)	Land Cover Types
Morrow	140.6	73.8	23.8	Exclusive Farm Use	Agriculture; shrubland
Umatilla	71.3	59.4	11.1	Exclusive Farm Use; Grazing-Farm	Agriculture; forest/woodland; grassland; shrubland; riparian
Union	36.7	20.7	6.5	Exclusive Farm-Use; Agriculture-Grazing; Timber-Grazing	Forest/woodland; riparian; shrubland
Baker	648.3	479.1	120.6	Exclusive Farm Use	Forest/woodland; grassland; shrubland; riparian

⁵⁴ OAR 345-022-0022, effective May 15, 2007.

⁵⁵ B2HAMD1 Request for Amendment 1 Table 7.1-3. 2023-06-08; B2HAPPDoc3-16 ASC 09a Exhibit I Soil ASC Part 1 2018-09-28, Section 3.5.1.1, page I-13.

⁵⁶ B2HAMD1 Request for Amendment 1 Tables 5.2-2, 5.2-4, 5.2-6, 5.2-8 and 5.2-10 2023-06-08, pg. 9-14.

Table 9: Land Use and Cover Types within Proposed RFA1 Site Boundary Additions

County	Acres Within Analysis Area	High Value Farmland Soils within Analysis Area	Acres Impacted	Zone(s)	Land Cover Types
Malheur	139.1	7.9	25.2	Exclusive Farm Use – Exclusive Range Use; Heavy Industrial	Agriculture; grassland; shrubland; open water

1
2 Soil properties and land cover types within the proposed RFA1 site boundary additions were
3 determined by reviewing U.S. Department of Agriculture’s 2011 Natural Resources
4 Conservation Service (NRCS) State Soil Geographic Database. Slope within the proposed RFA1
5 site boundary additions was evaluated using the USGS’s National Elevation Dataset. RFA1
6 Attachment 7-1 presents soil properties by soil map unit; RFA1 Figures 7-3 and 7-4 present the
7 soil map units. As presented in RFA1 Table 7-3 and RFA1 Attachment 7-1, some soils within the
8 proposed RFA1 site boundary additions have high wind and water erodibility; low soil loss
9 tolerance; or have slopes greater than 25 percent.

10
11 *Construction*

12
13 Construction activities within the proposed RFA1 site boundary additions will result in
14 approximately 129 acres of temporary disturbance. Construction activities will include clearing,
15 grubbing, grading, blasting, backfilling, and excavation activities within the site boundary.⁵⁷
16 Impacts will include erosion, compaction, loss of soil productivity, damage to land drainage and
17 irrigation systems, mixing of topsoil and subsoils, and loss of topsoil.⁵⁸

18
19 To minimize construction-related erosion impacts, Council previously imposed Soil Protection
20 Condition 1 (Condition GEN-SP-01) requiring that the certificate holder:

- 21 • Submit a final Erosion Sediment Control Plan (ESCP), as included in the DEQ-issued
- 22 1200-C permit, to the Department, prior to construction; and,
- 23 • Based on the final ESCP, conduct all work in compliance with the 1200-C permit
- 24 requirements and ESCP.

25
26 The soil characteristics and type/extent of impacts resulting from construction of the proposed
27 RFA1 site boundary additions would not differ from those previously evaluated by Council in
28 the *Final Order on the ASC*. However, the Department recommends Council amend Soil

⁵⁷ B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, Section 3.5.1.1.

⁵⁸ B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, Table I-4 and Section 3.5.4.

1 Protection Condition 1 (Condition GEN-SP-01) to support effective implementation and intent
2 of the ESCP under the Site Certificate.

3
4 Under the 1200-C permit, an ESCP can be revised throughout construction to address
5 numerous changes.⁵⁹ However, the language of existing Soil Protection Condition 1 (Condition
6 GEN-SP-01) could be interpreted to limit the ESCP to one version – a singular version finalized
7 prior to construction. The existing condition also does not provide the *Department* the
8 authority to require that changes be implemented in an ESCP. The Department must be given
9 authority to require revisions to the ESCP because it is the ESCP that Council relies upon to
10 ensure that erosion impacts are minimized, in compliance with the Soil Protection. The
11 Department recommends Council amend the condition as presented below:

12
13 **Recommended Amended Soil Protection Condition 1:** The certificate holder shall:

- 14 a. Prior to construction of the facility, submit to the Department a ~~final copy of an~~ ODEQ-
15 issued NPDES 1200-C General Construction Permit, ~~including the final and~~ Erosion
16 Sediment Control Plan (ESCP). ~~The protective measures described in the 1200-C Permit~~
17 ~~Application and ESCP as provided in Attachment I-3 of the Final Order on the ASC, shall~~
18 ~~be included in the final ESCP.~~
19 b. During construction of the facility, the certificate holder shall conduct all work in
20 compliance with the NPDES 1200-C General Construction Permit, ~~and~~ ESCP or revised
21 ESCP, if applicable. The ESCP shall be revised if determined necessary by the certificate
22 holder, certificate holder’s contractor(s) or the Department. Any Department-required
23 ESCP revisions shall be implemented within 14-days, unless otherwise agreed to by the
24 Department based on a good faith effort to address erosion issues.

25 [GEN-SP-01; *Final Order on ASC*; AMD1]

26
27 Construction will result in risk to soils from spills or leakage of chemicals, petroleum products
28 such as diesel fuel, or other materials.⁶⁰ Construction will include use and storage, at
29 designated locations, of gasoline; diesel; motor and gear oil; antifreeze; transmission fluid;
30 hydraulic fluid; detergents; paint/solvents; herbicides; jet fuel for helicopter use; and blasting
31 materials (where needed to blast rock).

32
33 Council previously imposed Soil Protection Condition 2 (Condition GEN-SP-02) requiring that the
34 certificate holder finalize a Construction Spill Prevention Control and Countermeasure Control
35 (SPCC) Plan, consistent with the draft SPCC Plan included in *Final Order on ASC* Attachment G-4;
36 and that the requirements of the final SPCC Plan be adhered to throughout construction. In
37 RFA1, the certificate holder requests that Council amend Soil Protection Condition 2 (Condition
38 GEN-SP-02), to replace the SPCC Plan with a Hazardous Waste Management and Spill Response

⁵⁹ DEQ Construction Stormwater Application and Forms Manual. Accessed June 11, 2023: [wqp1200cinfo.pdf \(oregon.gov\)](http://wqp1200cinfo.pdf(oregon.gov)), pg. 17-18. ESCP revisions under the 1200-C permit can be made for: emergency situations; registrant change of address; change in size of project; change in size or location of disturbed areas; changes to best management practices; changes in erosion and sediment control inspector; and changes in DEQ or agent requests.

⁶⁰ B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC Part 1 2018-09-28, Sections 3.5.1.6 and 3.6.3.

1 Plan (HWMSRP). The certificate holder agrees to include all prior representations of *Final Order*
2 *on ASC* Attachment G-4 in the HWMSRP, and that the HWMSRP would continue to include a
3 complete inventory of hazardous and non-hazardous materials (Material Safety Data Sheets,
4 quantity, location) and appropriate spill response plan/materials; and emergency response
5 contact information. Because the difference between the SPCC Plan and HWMSRP is not
6 substantive for purposes of compliance under the Soil Protection standard, the Department
7 recommends Council amend the condition as requested:

8
9 **Recommended Amended Soil Protection Condition 2:** The certificate holder shall:

- 10 a. Prior to construction of the facility, submit to the Department a final copy of a
11 Construction ~~Spill Prevention Control and Countermeasures Plan (SPCC Plan)~~
12 ~~Hazardous Waste Management and Spill Response Plan (HWMSRP)~~. The protective
13 measures described in the draft Construction ~~HWMSRP Plan~~, as provided in
14 Attachment G-4 of the Final Order on the ASCRFA1, shall be included in the final
15 ~~SPCC Plan~~ HWMSRP, unless otherwise approved by the Department.
16 b. During construction of the facility, the certificate holder shall conduct all work in
17 compliance with the ~~final~~ Construction ~~SPCC Plan~~ HWMSRP.

18 [Soil Protection Condition 2; *Final Order on ASC*; AMD1]
19

20 Construction activities may include blasting in areas where shallow bedrock is encountered. To
21 minimize potential soil-related impacts from blasting, including subsidence, landslides, and
22 slope instability, Council previously imposed Soil Protection Condition 4 (Condition GEN-SP-04).
23 Soil Protection Condition 4 (Condition GEN-SP-04) requires that, prior to construction, the
24 certificate holder finalize a Blasting Plan; and, during construction, as applicable to blasting
25 activities, implement and adhere to the requirements of the final Blasting Plan. The Blasting
26 Plan, as provided in *Final Order on ASC* Attachment G-5, includes safety procedures and a
27 notification process, as summarized below:

- 28 • At least 14-days prior to any blasting necessary during construction of the facility,
29 certificate holder shall ensure that its Construction Contractor identifies all
30 landowners of record and occupants within 1,250 feet of blasting actions and
31 provide notification to those landowners and occupants of the blasting schedule,
32 certificate holder or construction contractor contact information, potential
33 risks/hazards and of measures that will be taken to monitor and minimize any
34 ground shaking impacts.
- 35 • The construction contractor would publish a proposed blasting schedule in the local
36 newspaper 1 week prior to any blasting activities. The schedule would identify the
37 location, dates, and times blasting would occur. No blasting would occur outside of the
38 published schedule, except in emergency situations.
- 39 • The construction contractor would post warning signs at all entry points near blasting
40 locations. Warning signs would include information on blasting, including the general
41 hours blasting might take place, and audible signals to be used warning of impending
42 blasting and to indicate the site is all clear.
- 43 • Access points to areas where blasting would take place would be blocked to prevent
44 access by the public at least 30 minutes prior to blasting. The site shall be swept 5

1 minutes prior to blasting to ensure no unauthorized personnel have wandered onto the
2 site. An audible warning signal, capable of carrying for 0.5 mile, shall be used at least 2
3 minutes prior to blasting. An “all-clear” signal will be given once it has been determined
4 the area is safe.

- 5 • Blasting in the vicinity of pipelines would be coordinated with the pipeline operator and
6 would follow operator-specific procedures, as needed.
- 7 • During right-of-way negotiations, the applicant would consult with underlying
8 landowners to confirm whether property to be crossed by facility contains a well or
9 spring, and whether, if blasting is identified as a construction technique within subject
10 property, landowner requests pre-blast flow measurements to assess any potential
11 damages from blasting. If damages result solely from the blasting activity, applicant
12 would provide compensation for adequate repair or replacement.

13
14 The plan requires implementation of a seismic monitoring plan or application of scaled distance
15 factors to monitor and ensure ground vibration at the nearest structures do not exceed NFPA
16 established limits during blasting activities. The plan requires preparation and submittal of a
17 post monitoring and seismic report; and, that the contractor demonstrate active insurance
18 coverage for a minimum of \$1,000,000.⁶¹

19
20 As described in the *Final Order on the ASC*, there are no specific local permits or local or state
21 regulatory requirements within Council’s jurisdiction that apply to blasting or use of explosives.
22 However, the condition requires that the Blasting Plan be finalized based on review and
23 approval by the Department, in consultation with appropriate state and local agencies. Because
24 there are no local or state blasting or use of explosive regulations that are within the
25 jurisdiction of Council or reviewing agencies⁶², the Department recommends Council amend the
26 condition to remove the final agency review and approval process. The plan would still be
27 required to be finalized prior to blasting activities; would be required to maintain all
28 requirements described above; and would be required to be adhered to during all construction-
29 related blasting activities. The recommended condition amendment would only remove the
30 process of final review and approval for elements of the plan for which neither the Department
31 nor reviewing agencies have technical expertise or jurisdictional authority. The recommended
32 amended condition is presented below:

33
34 **Recommended Amended Soil Protection Condition 4:**

- 35 a. Prior to construction ~~related blasting, in accordance with the OAR 345-025-0016~~
36 ~~agency consultation process outlined in the draft Framework Blasting Plan~~
37 ~~(attachment G-5 of the Final Order on the ASC),~~ the certificate holder shall finalize,
38 and submit to the Department ~~for approval,~~ a final Blasting Plan inclusive of all
39 measures included in the draft Framework Blasting Plan (Final Order on RFA1
40 Attachment G-5). The final Blasting Plan shall meet all applicable federal, state and
41 local requirements related to the transportation, storage and use of explosive.

⁶¹ B2HAPP Proposed Order Agency Consultation DOGAMI 2019-10-30.

⁶² Reviewing agency as defined in OAR 345-001-0010(28).

- 1 b. Prior to construction related blasting the certificate holder will consult with
 2 landowners regarding right-of-way acquisition, and during these consultations, the
 3 certificate holder will discuss with the landowner any blasting that the certificate
 4 holder plans to conduct on the landowner’s property. If the landowner identifies a
 5 natural spring or well on the property, the certificate holder will notify the
 6 landowner that at the landowner’s request, the certificate holder shall conduct pre-
 7 blasting baseline flow and water quality measurements for turbidity. The certificate
 8 holder shall compensate the landowner for adequate repair or replacement if
 9 damages to the flow or quality of the natural spring are caused by blasting.
- 10 c. During construction related blasting, the certificate holder shall conduct all work in
 11 compliance with the final Blasting Plan approved by the Department.
 12 [GEN-SP-04, *Final Order on ASC*, AMD1]
 13

14 The Department also recommends that Council amend Structural Standard Condition 1 to
 15 remove the requirement that the certificate holder notify the Department of blasting locations
 16 in the submittal of the pre-construction geotechnical report. Potential need for blasting will be
 17 determined by the construction contractor, which will be required to demonstrate landowner
 18 consultation and noticing, as described above, -in advance of any blasting. Requiring that the
 19 geotechnical report identify potential blasting locations, in tabular format, is redundant and
 20 unnecessary given the requirements of the Blasting Plan.

21
 22 **Recommended Amended Structural Standard Condition 1:** At least 90 days prior to
 23 construction of a phase or segment of the facility, unless otherwise approved by the
 24 Department:

- 25 a.
- 26 b. The certificate holder shall submit to the Department and DOGAMI a pre-
 27 construction site-specific geological and geotechnical investigation report S..
- 28 i. ...
- 29 ~~ii. In the electronic (email) submission of the report to the Department, as~~
 30 ~~required under (b) of this condition, the certificate holder shall identify~~
 31 ~~whether blasting is recommended. For any recommended blasting locations, in~~
 32 ~~table and map format, specify the transmission line structure number,~~
 33 ~~milepost and county; and, either submit with the report the draft Framework~~
 34 ~~Blasting Plan (Soil Protection Condition 4, Attachment G-5 of this order),~~
 35 ~~following the pre-construction agency review process or provide the schedule~~
 36 ~~for initiation of the established agency review process, as provided in the draft~~
 37 ~~Blasting Framework Plan.~~

38
 39 *Operation*

40
 41 Operation of facility components within the proposed RFA1 site boundary additions would have
 42 the potential for soil erosion from O&M related disturbance at tower sites and use of access
 43 roads. Council previously imposed Soil Protection Condition 5 (Condition OPR-SP-01) requiring

1 that the certificate holder inspect and repair any erosion related impacts resulting from O&M
2 activities.

3
4 **III.D.2. Conclusions of Law**

5
6 Based on the foregoing analysis, and subject to compliance with the existing and recommended
7 amended conditions described above, the Department recommends the Council find that the
8 proposed RFA1 site boundary additions are not likely to result in a significant adverse impact to
9 soils.

10
11 **III.E. LAND USE: OAR 345-022-0030**

12
13 *(1) To issue a site certificate, the Council must find that the proposed facility*
14 *complies with the statewide planning goals adopted by the Land Conservation*
15 *and Development Commission.*

16
17 *(2) The Council shall find that a proposed facility complies with section (1) if:*

18
19 *(a) The applicant elects to obtain local land use approvals under ORS*
20 *469.504(1)(a) and the Council finds that the facility has received local land use*
21 *approval under the acknowledged comprehensive plan and land use*
22 *regulations of the affected local government; or*

23
24 *(b) The applicant elects to obtain a Council determination under ORS*
25 *469.504(1)(b) and the Council determines that:*

26
27 *(A) The proposed facility complies with applicable substantive criteria as*
28 *described in section (3) and the facility complies with any Land Conservation*
29 *and Development Commission administrative rules and goals and any land use*
30 *statutes directly applicable to the facility under ORS 197.646(3);*

31
32 *(B) For a proposed facility that does not comply with one or more of the*
33 *applicable substantive criteria as described in section (3), the facility otherwise*
34 *complies with the statewide planning goals or an exception to any applicable*
35 *statewide planning goal is justified under section (4); or*

36
37 *(C) For a proposed facility that the Council decides, under sections (3) or (6), to*
38 *evaluate against the statewide planning goals, the proposed facility complies*
39 *with the applicable statewide planning goals or that an exception to any*
40 *applicable statewide planning goal is justified under section (4).*

41
42 *(3) As used in this rule, the "applicable substantive criteria" are criteria from*
43 *the affected local government's acknowledged comprehensive plan and land*

1 use ordinances that are required by the statewide planning goals and that are
2 in effect on the date the applicant submits the application. If the special
3 advisory group recommends applicable substantive criteria, as described
4 under OAR 345-021-0050, the Council shall apply them. If the special advisory
5 group does not recommend applicable substantive criteria, the Council shall
6 decide either to make its own determination of the applicable substantive
7 criteria and apply them or to evaluate the proposed facility against the
8 statewide planning goals.

9
10 (4) The Council may find goal compliance for a proposed facility that does not
11 otherwise comply with one or more statewide planning goals by taking an
12 exception to the applicable goal. Notwithstanding the requirements of ORS
13 197.732, the statewide planning goal pertaining to the exception process or
14 any rules of the Land Conservation and Development Commission pertaining
15 to the exception process, the Council may take an exception to a goal if the
16 Council finds:

17
18 (a) The land subject to the exception is physically developed to the extent that
19 the land is no longer available for uses allowed by the applicable goal;

20
21 (b) The land subject to the exception is irrevocably committed as described by
22 the rules of the Land Conservation and Development Commission to uses not
23 allowed by the applicable goal because existing adjacent uses and other
24 relevant factors make uses allowed by the applicable goal impracticable; or

25
26 (c) The following standards are met:

27
28 (A) Reasons justify why the state policy embodied in the applicable goal
29 should not apply;

30
31 (B) The significant environmental, economic, social and energy consequences
32 anticipated as a result of the proposed facility have been identified and
33 adverse impacts will be mitigated in accordance with rules of the Council
34 applicable to the siting of the proposed facility; and

35
36 (C) The proposed facility is compatible with other adjacent uses or will be
37 made compatible through measures designed to reduce adverse impacts.

38
39 (5) If the Council finds that applicable substantive local criteria and applicable
40 statutes and state administrative rules would impose conflicting requirements,
41 the Council shall resolve the conflict consistent with the public interest. In
42 resolving the conflict, the Council cannot waive any applicable state statute.
43

1 (6) If the special advisory group recommends applicable substantive criteria
2 for an energy facility described in ORS 469.300(11)(a)(C) to (E) or for a related
3 or supporting facility that does not pass through more than one local
4 government jurisdiction or more than three zones in any one jurisdiction, the
5 Council shall apply the criteria recommended by the special advisory group. If
6 the special advisory group recommends applicable substantive criteria for an
7 energy facility described in ORS 469.300(11)(a)(C) to (E) or a related or
8 supporting facility that passes through more than one jurisdiction or more
9 than three zones in any one jurisdiction, the Council shall review the
10 recommended criteria and decide whether to evaluate the proposed facility
11 against the applicable substantive criteria recommended by the special
12 advisory group, against the statewide planning goals or against a combination
13 of the applicable substantive criteria and statewide planning goals. In making
14 the decision, the Council shall consult with the special advisory group, and
15 shall consider:

16 (a) The number of jurisdictions and zones in question;

17 (b) The degree to which the applicable substantive criteria reflect local
18 government consideration of energy facilities in the planning process; and

19 (c) The level of consistence of the applicable substantive criteria from the
20 various zones and jurisdictions.⁶³

21 22 23 24 25 **III.E.1. Findings of Fact**

26
27 The proposed RFA1 site boundary additions are located in Morrow, Umatilla, Union, Baker
28 County and Malheur counties.⁶⁴ The proposed RFA1 site boundary additions would be located
29 in the following zones:

- 30
- 31 • Morrow County: Exclusive Farm Use (EFU)
 - 32 • Umatilla County: EFU; Grazing Farm (GF)
 - 33 • Union County: EFU; Agricultural Grazing (A-2); Timber-Grazing (A-4)
 - 34 • Baker County: EFU
 - 35 • Malheur County: EFU-Exclusive Range Use (C-A1 and C-A2); Heavy Industrial (HI)
- 36

37 On October 7th, 2011, the Council appointed the Morrow County Board of Commissioners,
38 Umatilla County Board of Commissioners, Union County Board of Commissioners, Baker County

⁶³ OAR 345-022-0030, effective September 3, 2003, as amended by minor correction filed May 28, 2019.

⁶⁴ Because none of the proposed changes are located within the jurisdiction of the City of North Power or the City of Huntington compliance with applicable local substantive criteria from those jurisdictions from comprehensive plans and land use regulations are not discussed further in this Order.

1 Board of Commissioners, and Malheur County Court, as Special Advisory Groups (SAG) for the
2 review of the Application for Site Certificate (ASC).⁶⁵

3
4 As discussed further below, the SAGs recommended applicable substantive criteria for the
5 review of the ASC. The certificate holder submitted the preliminary Application for Site
6 Certificate on February 27, 2013, and as provided in OAR 345-020-0000(9), this was the date
7 used to determine local applicable substantive criteria for the Council’s review of the
8 Application.⁶⁶

9
10 Under OAR 345-027-0375(3)(a), the proposed RFA1 site boundary additions must comply with
11 the applicable substantive criteria from the comprehensive plans and land use regulations of
12 these counties in effect on the date the preliminary request for amendment was submitted,
13 December 7, 2022.

14
15 *III.E.1.a Morrow County Applicable Substantive Criteria*

16
17 In the *Final Order on the ASC*, the Council evaluated the facility’s compliance with applicable
18 provisions of Morrow County Zoning Ordinance (MCZO) Section 3.010 (EFU Zone), Section
19 3.070 (General Industrial Zone), Section 3.073 (Port Industrial Zone), Section 3.100 (Flood Plain
20 Overlay Zone), and Section 3.200 (Significant Resource Sites). The Council also evaluated the
21 component’s consistency with applicable policies of the Morrow County Comprehensive Plan.

22
23 Proposed RFA1 site boundary additions in Morrow County include the addition of the Little
24 Juniper Canyon alternative, located between Little Juniper Lane and Bombing Range Road,
25 approximately 3 miles south of Naval Weapons Training Facility Boardman (NWTF Boardman).

26
27 The Little Juniper Canyon alternative would shift a one-mile segment of the approved
28 transmission line route to the west to minimize impacts to a proposed solar facility.⁶⁷ The
29 alternative route is located on the same tax lots as the proposed route, within predominately
30 cultivated lands in Exclusive Farm Use zoned land, but is outside of the previously approved site
31 boundary.⁶⁸

32
33 The Little Juniper Canyon alternative would include the construction of 4 single-circuit lattice
34 towers supporting the 500-kv transmission line, 2 pulling and tensioning sites, and 1.4 miles of
35 access road changes. The proposed site boundary additions associated with the Little Juniper
36 Canyon Alternative are expected to result in permanent impacts to approximately 2.5 acres of

⁶⁵ B2HNOIDoc71 B2H SAG Order Union County 2011-10-07 B2H-0341.pdf; B2HNOIDoc72 B2H SAG Order Morrow County 2011-10-07 B2H-0339.pdf; B2HNOIDoc73 B2H SAG Order Baker County 2011-10-07 B2H-0337.pdf; B2HNOIDoc112 B2H SAG Order Malheur County 2011-10-07 B2H-0338.pdf; B2HNOIDoc111 B2H SAG Order Umatilla County 2011-10-07 B2H-0340.pdf.

⁶⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 149 of 10586.

⁶⁷ B2HAMD1 RFA1 2023-06-08. Table 4.1-1.

⁶⁸ B2HAMD1 RFA1 2023-06-08. Figure 4-1 (Map 1); Figure 7-5 and Figure 7-13.

1 predominantly cultivated land zoned for Exclusive Farm Use.⁶⁹ These impacts are assumed to be
 2 in lieu of, not in addition to, impacts from the portion of the approved facility sited on the same
 3 tax lots.

4
 5 RFA1 also proposes 2.8 miles of access road changes in Morrow County not associated with the
 6 Little Juniper Canyon Alternative, including 0.9 miles of improvements to existing roads and 1.9
 7 miles of new roads. The access road changes are proposed to be located on lands zoned for
 8 Exclusive Farm Use adjacent to the Naval Weapons Systems Training Facility Boardman (NWSTF
 9 Boardman) and near Butter Creek.

10
 11 Because the proposed RFA1 site boundary additions are located on EFU-zoned land,
 12 consistency with MCZO Section 3.010 is evaluated.

13
 14 Portions of the additions associated with the Little Juniper Creek alternative are also located
 15 within the 100-year flood plain of Little Juniper Creek and are classified as a Special Flood
 16 Hazard Area in the Flood Plain Overlay Zone. These additions are evaluated for consistency with
 17 MCZO Section 3.100.

18
 19 No proposed additions are located within Morrow County’s General or Port Industrial Zones,
 20 and there are no Significant Resource Sites identified by Morrow County’s Significant Resource
 21 Overlay Map (1985), located within the proposed additions, so MCZO Sections 3.070, 3.073,
 22 and 3.200 do not apply to the evaluation of RFA1.

23
 24 The Council previously evaluated the proposed facility components in Morrow County for
 25 consistency with Agricultural Lands, Natural Hazards, and Public Facilities and Services Elements
 26 of the Morrow County Comprehensive Plan. Because the Public Facilities and Services Elements
 27 that were previously identified as applicable to the facility are concerned with the siting of
 28 substations, and no changes to the locations of substations associated with the facility are
 29 proposed as part of RFA1, those findings and policies are not evaluated further in this Order.

30
 31 The applicable substantive criteria from the MCZO and Comprehensive Plan are listed in Table
 32 12: *Morrow County Applicable Substantive Criteria* below.

Table 10: Morrow County Applicable Substantive Criteria

Section	Description
Morrow County Zoning Ordinance (MCZO)	
Section 3.010	Exclusive Farm Use, EFU Zone
Section D	Conditional Uses Permitted
Section 3.100	Flood Plain Overlay Zone
Section 4.1	Establishment of Development Permit
Section 5.1	General Standards
Morrow County Comprehensive Plan (MCCP)	

⁶⁹ B2HAMD1 RFA1 2023-06-08. Section 5.2.3.

Table 10: Morrow County Applicable Substantive Criteria

Section	Description
Agricultural Lands Element	Agricultural Policy 1
Natural Hazards Element	Natural Hazards Policy 2

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2
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MCZO 3.010, Exclusive Farm Use (EFU) Zone

“B. Uses Permitted Outright. In the EFU zone, the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions set forth by this ordinance:

** * * * **

“25. Utility facilities necessary for public service, including associated transmission lines as defined in Article 1 and wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height as provided in Subsection D.10.

** * * * **

“D. Use Standards

** * * * **

“10. A utility facility that is necessary for public service.

a. A utility facility is necessary for public service if the facility must be sited in the exclusive farm use zone in order to provide the service.

(1) To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

(b) The proposed facility is locationally-dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

1
2 (c) Lack of available urban and nonresource lands;

3
4 (d) Availability of existing rights of way;

5
6 (e) Public health and safety; and

7
8 (f) Other requirements of state and federal agencies.
9

10 (2) Costs associated with any of the factors listed in Subsection (1) may be
11 considered, but cost alone may not be the only consideration in determining
12 that a utility facility is necessary for public service. Land costs shall not be
13 included when considering alternative locations for substantially similar utility
14 facilities and the siting of utility facilities that are not substantially similar.
15

16 (3) The owner of a utility facility approved under Subsection a shall be
17 responsible for restoring, as nearly as possible, to its former condition any
18 agricultural land and associated improvements that are damaged or
19 otherwise disturbed by the siting, maintenance, repair or reconstruction of the
20 facility. Nothing in this Subsection shall prevent the owner of the utility facility
21 from requiring a bond or other security from a contractor or otherwise
22 imposing on a contractor the responsibility for restoration.
23

24 (4) The county shall impose clear and objective conditions on an application
25 for utility facility siting to mitigate and minimize the impacts of the proposed
26 facility, if any, on surrounding lands devoted to farm use in order to prevent a
27 significant change in accepted farm practices or a significant increase in the
28 cost of farm practices on surrounding farmlands.
29

30 (5) Utility facilities necessary for public service may include on-site and off-site
31 facilities for temporary workforce housing for workers constructing a utility
32 facility. Such facilities must be removed or converted to an allowed use under
33 the EFU Zone or other statute or rule when project construction is complete.
34 Off-site facilities allowed under this Subsection are subject to Article 6.
35 Temporary workforce housing facilities not included in the initial approval may
36 be considered through a minor amendment request. A minor amendment
37 request shall have no effect on the original approval.
38

39 (6) In addition to the provisions of Subsection D.10.a(1) through (4), the
40 establishment or extension of a sewer system as defined by OAR 660-011-
41 0060(1)(f) shall be subject to the provisions of 660-011-0060.
42

1 (7) *The provisions of Subsection a do not apply to interstate natural gas*
2 *pipelines and associated facilities authorized by and subject to regulation by*
3 *the Federal Energy Regulatory Commission.*

4
5 * * * * *

6
7 MCZO 3.010 provides that a utility facility necessary for public service, excluding a commercial
8 power generation facility or a transmission tower over 200 feet in height, is a use permitted by
9 right in Morrow County’s Exclusive Farm Use Zone. The Little Juniper Creek alternative would
10 include the construction of four transmission towers to support the 500-kv transmission line.
11 The towers will be between approximately 108 and 200 feet in height and will not exceed 200
12 feet.⁷⁰

13
14 The criteria for whether a utility facility is necessary for public service is provided under MCZO
15 3.010.D.10.a. These criteria mirror the underlying provisions of ORS 215.275. In the *Final Order*
16 *on the ASC*, the Council determined that the transmission line qualifies as a utility facility
17 necessary for public service under ORS 215.275 because there was no reasonably direct route
18 that would allow the applicant to construct the transmission line while avoiding all impacts to
19 EFU zoned land, that the applicant had demonstrated a “lack of available nonresource lands”
20 for which to site the proposed facility; and that the applicant had proposed the route to utilize
21 some available rights-of-ways.⁷¹ The Council also determined that access roads and other
22 ancillary facilities located in EFU Zones were to be evaluated as accessory uses to the
23 transmission line.⁷²

24
25 The proposed RFA1 site boundary additions do not significantly change the nature or extent of
26 the use. Accordingly, the Department recommends that the Council continue to rely on its
27 previous findings that the portion of the facility, including related or supporting facilities,
28 located in Morrow County’s EFU Zone, continue to qualify as utility facilities necessary for
29 public service.

30
31 MCZO 3.010.D.10.a(4) requires the County, or in this case, the Council, to impose clear
32 and objective conditions to mitigate and minimize the impacts of the proposed facility
33 on surrounding lands devoted to farm use in order to prevent a significant change in
34 accepted farm practices or a significant increase in the cost of farm practices on
35 surrounding farmlands.
36

⁷⁰ B2HAPPDoc3-3 ASC 02a_ Exhibit_B_Project Description_ASC 2018-09-28, page 56 of 96

⁷¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 255-256 of 10586.

⁷² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 156 of 10586, citing, *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

1 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11) requiring that
2 the certificate holder finalize and implement an Agricultural Assessment and Mitigation Plan
3 prescribing monitoring and mitigation of impacts to soils and activities.
4

5 Because the Council previously determined that the facility is a permitted use in Morrow
6 County’s EFU Zone, because the proposed RFA1 site boundary additions do not significantly
7 change the nature or extent of the use and because the Council previously imposed conditions
8 ensuring compliance with the applicable use standards that would continue to apply, the
9 Department recommends Council find that the proposed RFA1 site boundary additions would
10 continue to comply with MCZO Section 3.010.
11

12 MCZO 3.100.4.1, Establishment of Development Permit
13

14 *4.1-1 Development Permit Required.*
15

16 *A development permit shall be obtained before construction or development*
17 *begins within any area of special flood hazard established in Section 3.2. The*
18 *permit shall be for all structures including manufactured homes, as set forth in*
19 *the “DEFINITIONS”, and for all development including fill and other activities,*
20 *also as set forth in the “DEFINITIONS”.*
21

22 *4.1-2 Application for Development Permit.*
23

24 *Application for a development permit shall be made on forms furnished by the*
25 *Morrow County Planning Director and may include but not be limited to; plans*
26 *in duplicate drawn to scale showing the nature, location, dimensions, and*
27 *elevations of the area in question; existing or proposed structures, fill, storage*
28 *of materials, drainage facilities, and the location of the foregoing. Specifically,*
29 *the following information is required:*
30

31 *(1) Elevation in relation to mean sea level, of the lowest floor (including*
32 *basement) of all structures;*
33

34 *(2) Elevation in relation to mean sea level to which any structure has been*
35 *flood proofed;*
36

37 *(3) Certification by a registered professional engineer or architect that the*
38 *flood proofing methods for any non-residential structure meet the flood*
39 *proofing criteria in Section 5.2-2; and*
40

41 *(4) Description of the extent to which a watercourse will be altered or*
42 *relocated as a result of proposed development.*
43

1 Portions of the proposed site boundary additions associated with Little Juniper Canyon
2 alternative fall within the 100-year flood plain of Little Juniper Creek and would be subject to
3 the provisions of MCZO 3.100.4.1-1.
4

5 The Council previously imposed Land Use Condition 1 (Condition GEN-LU-01) requiring that, in
6 relevant part, the certificate holder comply with and provide to the Department an approved
7 flood plain development permit for any work in the Morrow County Flood Plain Overlay Zone,
8 consistent with the requirements of MCZO 3.100.4.1. Because existing conditions would ensure
9 compliance with its provisions, the Department recommends that the Council find that the
10 proposed RFA1 site boundary additions would comply with MCZO 3.100.4.1.
11

12 MCZO 3.100.5.1, General Standards
13

14 *In all areas of special flood hazards, the following standards are required:*
15

16 *5.1-1 Anchoring*
17

18 *(1) All new construction and substantial improvements shall be anchored*
19 *to prevent flotation, collapse, or lateral movement of the structure.*
20

21 *(2) All manufactured homes must likewise be anchored to prevent*
22 *flotation, collapse or lateral movement, and shall be installed using*
23 *methods and practices that minimize flood damage. Anchoring methods*
24 *may include, but are not limited to, use of over-the-top or frame ties to*
25 *ground anchors (Reference FEMA's "Manufactured Home Installation in*
26 *Flood Hazard Areas: guidebook for additional techniques).*
27

28 *5.1-2 Construction Materials and Methods*
29

30 *(1) All new construction and substantial improvements shall be*
31 *constructed with materials and utility equipment resistant to flood*
32 *damage.*
33

34 *(2) All new construction and substantial improvements shall be*
35 *constructed using methods and practices that minimize flood damage.*
36

37 *(3) Electrical, heating, ventilation, plumbing, and air-conditioning*
38 *equipment and other service facilities shall be designed and/or otherwise*
39 *elevated or located so as to prevent water from entering or accumulating*
40 *within the components during conditions of flooding.*
41

42 ** * * * **
43

44 **5.4 FLOODWAYS**

1 *Located within areas of special flood hazard established in Section 3.2 are*
2 *areas designated as floodways. Since the floodway is an extremely hazardous*
3 *area due to the velocity of floodwaters which carry debris, potential*
4 *projectiles, and erosion potential, the following provisions apply:*

5
6 *(1) Prohibit encroachments, including fill, new construction, substantial*
7 *improvements, and other development unless certification by a registered*
8 *professional engineer or architect is provided demonstrating that*
9 *encroachments shall not result in any increase in flood levels during the*
10 *occurrence of the base flood discharge.*

11
12 *(2) If Section 5.4(1) is satisfied, all new construction and substantial*
13 *improvements shall comply with all applicable flood hazard reduction*
14 *provisions of Section 5.0, PROVISIONS FOR FLOOD HAZARD REDUCTION.*

15
16 The proposed RFA1 site boundary additions associated with the Little Juniper Canyon
17 alternative fall within the 100-year flood plain of Little Juniper Creek. The Council previously
18 imposed Land Use Condition 2 (Condition GEN-LU-02) requiring that, in relevant part, that all
19 buildings and the fixed bases of the transmission line towers located in Morrow County’s EFU
20 Zone be set back at least 100 feet from the high-water mark of all streams and lakes. Based
21 upon compliance with the condition, the Department recommends that the Council find that no
22 transmission towers associated with the Little Juniper Canyon alternative would be located
23 within a Special Flood Hazard Area, and that the proposed RFA1 site boundary additions would
24 comply with MCZO 3.100.5.1.

25
26 Council previously imposed Land Use Condition 2 (Condition GEN-LU-02) requiring that, in
27 relevant part, that all buildings and the fixed bases of the transmission line towers located in
28 Morrow County’s EFU Zone be set back at least 100 feet from the high-water mark of all
29 streams and lakes. Based upon compliance with the condition, the Department recommends
30 Council find that no transmission towers associated with the Little Juniper Canyon alternative
31 would be located within a floodway, and that the proposed RFA1 site boundary additions would
32 comply with MCZO 3.100.5.4.

33
34 MCCP Agricultural Lands Policy 1

35
36 *It shall be the policy of Morrow County, Oregon, to preserve agricultural lands,*
37 *to protect agriculture as its main economic enterprise, to balance economic*
38 *and environmental considerations, to limit non-compatible nonagricultural*
39 *development, and to maintain a high level of livability in the County.*

40
41 In its *Final Order on the ASC*, the Council found that, based on the applicant’s proposed
42 mitigation for temporary agricultural impacts and overall minimal permanent impacts to
43 agricultural lands from facility components, the facility would be consistent with MCCP

1 Agricultural Lands Policy 1.⁷³ The facility, as evaluated in the *Final Order on the ASC*, would
2 result in approximately 240 acres of temporary and permanent impacts to agricultural lands in
3 Morrow County.⁷⁴ Proposed RFA1 site boundary additions would result in less than 28 acres of
4 temporary and permanent impacts to agricultural lands, and would not be additive to the
5 previously evaluated impacts for the facility.
6

7 As described above, the Council previously imposed Land Use Condition 14 (Condition GEN-LU-
8 11), requiring that the certificate holder finalize and implement an Agricultural Assessment and
9 Mitigation Plan prescribing monitoring and mitigation of impacts to soils and activities. This
10 condition continues to apply.
11

12 Because the proposed RFA1 site boundary additions would not significantly increase the
13 quantity of agricultural lands in Morrow County impacted by the construction and operation of
14 the facility, and because the Council previously imposed conditions ensuring the monitoring
15 and mitigation of impacts to soils and agricultural activities, the Department recommends that
16 Council find that the proposed RFA1 site boundary additions would comply with M CCP
17 Agricultural Lands Policy 1.
18

19 M CCP Natural Hazards Element 20

21 In the *Final Order on the ASC*, the Council evaluated the facility’s compliance with the M CCP
22 Natural Hazards element generally, finding that because the facility was designed to minimize
23 and avoid locating facility components in hazard-prone areas, the facility would be consistent
24 with the element’s provisions.⁷⁵
25

26 The Morrow County Comprehensive Plan’s Natural Hazard Element was updated in 2016. The
27 updated section establishes several Natural Hazard Policies, including Natural Hazard Policy 2,
28 which provides:
29

30 *County land use regulation will assure proposed developments will receive a*
31 *review of potential natural hazards and that sufficient authority exists to*
32 *modify or deny applications where such hazards exist. Such provisions shall, at*
33 *a minimum, require specific information clearly determining the degree of*
34 *hazard present from applicants who seek approval to develop residential,*
35 *commercial, or industrial uses within known areas of natural disasters and*
36 *hazards.*
37

38 As described above, the Council previously imposed Land Use Condition 2 (Condition GEN-LU-
39 02) requiring that, in relevant part, all buildings and the fixed bases of the transmission line
40 towers located in Morrow County’s EFU Zone be set back at least 100 feet from the high-water

⁷³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 169 of 10586.

⁷⁴ B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.4.5.4 Table K-10, p. K-114.

⁷⁵ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 170 of 10586.

1 mark of all streams and lakes which generally assures that the transmission towers associated
2 with the Little Juniper Canyon alternative would be located outside of any Special Flood Hazard
3 Areas. As discussed in more detail in Sections III.C *Structural Standard* and III.N. *Wildfire*
4 *Prevention and Risk Mitigation*, the Council also previously imposed Structural Standard
5 Condition 1 (Condition PRE-SS-01) requiring, in relevant part, that the certificate holder provide
6 a geological and geotechnical investigation report demonstrating that the facility site has been
7 adequately characterized and the facility has been designed and located to avoid seismic, soil
8 and geologic hazards; and Public Services Condition 7 (Condition GEN-PS-03), requiring, in
9 relevant part, that the certificate holder provide a Wildfire Mitigation Plan which provides a
10 wildfire risk assessment and establishes action and preventative measures based on the
11 assessed operational risk from and of wildfire in each county affected by the facility. These
12 conditions, and by extension, the plans and reports they require, apply to the proposed RFA1
13 site boundary additions.

14

15 Because existing conditions generally assure that the degree of risk from flooding, wildfire, and
16 geologic hazard at the site will be adequately characterized and addressed prior to construction
17 of the facility, the Department recommends the Council find that the proposed RFA1 site
18 boundary additions would comply with Morrow County Natural Hazards Policy 2, and the M CCP
19 Natural Hazards Element more generally.

20

21 *III.E.1.b Umatilla County Applicable Substantive Criteria*

22

23 In the *Final Order on the ASC*, the Council evaluated the facility's compliance with applicable
24 provisions of Umatilla County Development Code (UCDC) 152.010 (Access to Buildings); 152.016
25 (Riparian Vegetation); 152.017 (Conditions for Development Proposals); 152.439 (Historical,
26 Archeological or Cultural Site/Structure Overlay; Criteria for Review); and 152.456 (Critical
27 Winter Range Overlay; Applicability); 152.055 to 152.063 (EFU Zones); 152.080 to 152.089
28 (Grazing/Farm Zone); 152.281 to 152.286 (Rural Tourist Commercial Zone); and 152.301 to
29 152.306 (Light Industrial Zone). The Council also evaluated the facility's compliance with
30 findings and policies of the Umatilla County Comprehensive Plan's Chapters dedicated to Open
31 Space, Scenic and Historic Areas, and Natural Resources, Public Facilities and Services, and
32 Transportation.

33

34 The proposed RFA1 site boundary additions in Umatilla County are associated with design
35 changes to 3.4 miles of access roads located along the previously approved site boundary. The
36 changes would include substantial improvements to 1.4 miles of existing road and the
37 construction of 2 miles of new access roads and would permanently impact approximately 5.6
38 acres.⁷⁶

39

40 The proposed RFA1 site boundary additions in Umatilla County are located in the County's
41 Exclusive Farm Use (EFU) and Grazing Farm (GF) zones. There are no proposed site boundary
42 additions in Umatilla County's Rural Tourist Commercial Zone, Light Industrial Zone, or

⁷⁶ RFA1, Section 5.2.4.

1 Historical, Archeological or Cultural Site/Structure Overlay Zone and compliance with the UCDC
 2 sections applicable to those zones are not discussed further in this Order. While there are
 3 proposed site boundary additions within Umatilla County’s Critical Winter Range Overlay Zone,
 4 no criteria or requirements associated with that zone that are applicable to the facility have
 5 been identified.

6
 7 The Umatilla County Board of Commissioners has adopted ordinances amending the Umatilla
 8 County Comprehensive Plan and UCDC since the submission of the initial preliminary
 9 Application for Site Certificate on February 27, 2013. The provisions of the Umatilla County
 10 Comprehensive Plan in effect as of May 16, 2018, and the UCDC in effect July 19, 2022, are
 11 applicable to the review of the site boundary additions proposed in RFA1.

12
 13 The applicable substantive criteria from the Umatilla County Comprehensive Plan and
 14 Development Code that are evaluated in this order are listed in Table 11 below.

Table 11: Umatilla County Applicable Substantive Criteria

Section	Description
Umatilla County Development Code (UCDC), Revision Date July 19, 2022	
Section 152.010	Access to Buildings
Section 152.016	Riparian Vegetation
Section 152.017	Conditions for Development Proposals
Section 152.059	Exclusive Farm Use Zone; Land Use Decisions
Section 152.085	Grazing Farm Zone, Conditional Uses Permitted
Section 152.086	Limitations on Conditional Uses
Section 152.617	Standards for Review: Conditional Uses and Land Use Decisions on EFU and GF Zoned Lands.
Umatilla County Comprehensive Plan (Revision Date May 16, 2018)	
Chapter 8. Open Space, Scenic and Historic Areas, and Natural Resources	Finding and Policy 37
Chapter 14. Public Facilities and Services	Finding and Policy 19
Chapter 15. Transportation	Finding and Policy 18

15
 16 UCDC 152.010, Access to Buildings

17
 18 *(A) Every building hereafter erected or moved shall be on a lot that abuts a*
 19 *public street or a recorded easement. All structures shall be so located on lots*
 20 *as to provide safe and convenient access for servicing, fire protection, and*
 21 *required off-street parking. In commercial and industrial zones, access points*
 22 *shall be minimized. To accomplish this, access shall be limited to one every*
 23 *200 feet and shall be reviewed during the design review stage or the*

1 conditional use hearing. If necessary to accomplish this, driveways may be
2 shared between two lots.

3
4 (B) Private driveways and easements that enter onto a public or county road
5 or state or federal highway shall be constructed of at least similar if not the
6 same material as the public or county road or state or federal highway to
7 protect the edge of the road from rapid deterioration. The improvements shall
8 extend at least 25 feet back from the edge of the existing travel lane surface.
9

10 In the *Final Order on the ASC*, the Council imposed Land Use Condition 5 (Condition GEN-LU-04)
11 requiring that compliance with the requirements of UCDC 152.010. Because this condition
12 would apply to the proposed RFA1 site boundary additions, the Department recommends that
13 the Council find the proposed RFA1 site boundary additions would comply with UCDC 152.010.
14

15 UCDC 152.016, Riparian Vegetation

16
17 (A) The following standards shall apply for the maintenance, removal and
18 replacement of riparian vegetation along streams, lakes and wetlands which
19 are subject to the provisions of this chapter:
20

21 (1) No more of a parcel's existing vegetation shall be cleared from the setback
22 and adjacent area than is necessary for uses permitted with a zoning permit,
23 accessory buildings, and/or necessary access.
24

25 (2) Construction activities in and adjacent to the setback area shall occur in
26 such a manner so as to avoid unnecessary excavation and/or removal of
27 existing vegetation beyond that required for the facilities indicated in
28 subdivision (A)(1) above. Where vegetation removal beyond that allowed in
29 subdivision (A)(1) above cannot be avoided, the site shall be replanted during
30 the next replanting season to avoid water sedimentation. The vegetation shall
31 be of indigenous species in order to maintain the natural character of the
32 area.
33

34 (3) A maximum of 25% of existing natural vegetation may be removed from
35 the setback area.
36

37 (4) The following uses and activities are excepted from the above standards:
38

39 (a) Commercial forest practices regulated by the Oregon Forest Practices Act,
40 being ORS 527.610 et seq.;

41
42 (b) Vegetation removal necessary to provide water access for a water
43 dependent use;
44

1 (c) Removal of dead or diseased vegetation that poses a safety or health
2 hazard;

3
4 (d) Removal of vegetation necessary for the maintenance or replacement of
5 structural shoreline stabilization.

6
7 (5) In cases of zoning permits, conditional use permits, variances, and other
8 land use actions which require site plan review or conditions for approval, and
9 which are subject to provisions of this division, the review body shall prepare
10 findings and address the maintenance, removal and replacement of riparian
11 vegetation.

12
13 (B) Minor drainage improvements necessary to ensure effective drainage on
14 surrounding agricultural lands shall be coordinated with the Oregon
15 Department of Fish and Wildlife and Soil and Water Conservation District.
16 Existing drainage ditches may be cleared to original specifications without
17 review.

18
19 In the *Final Order on the ASC*, the Council imposed Land Use Condition 5 (Condition GEN-LU-04)
20 requiring, in relevant part, that the certificate holder locate transmission towers and access
21 roads at least 25 feet from Class I streams and retain at least 75 percent of vegetation within
22 the riparian areas within Umatilla County, and coordinate with the Oregon Department of Fish
23 and Wildlife and Soil and Water Conservation District on minor drainage improvements in
24 Umatilla County necessary to ensure effective drainage on surrounding agricultural lands. This
25 condition would apply to the proposed RFA1 site boundary additions. Because existing
26 conditions would ensure compliance with Umatilla County’s riparian vegetation standards, the
27 Department recommends that the Council find the proposed RFA1 site boundary additions
28 would comply with UCDC 152.016.

29
30 UCDC 152.017, Conditions for Development Proposals

31
32 (A) *The proposed use shall not impose an undue burden on the public*
33 *transportation system. Any increase meeting the definition of significant*
34 *change in trip generation constitutes an undue burden.*

35
36 (B) *For developments likely to generate a significant increase in trip*
37 *generation, applicant shall be required to provide adequate information, such*
38 *as a traffic impact study or traffic counts, to demonstrate the level of impact*
39 *to the surrounding system. The scope of the impact study shall be coordinated*
40 *with the providers of the transportation facility. Proposals that meet the*
41 *requirements in §152.019 (B) are subject to §152.019 (C), Traffic Impact*
42 *Analysis Requirements.*

1 (C) The applicant or developer may be required to mitigate impacts
2 attributable to the project. Types of mitigation may include such
3 improvements as paving, curbing, bridge improvements, drainage, installation
4 or contribution to traffic signals, construction of sidewalks, bikeways,
5 accessways or paths. The determination of impact or effect should be
6 coordinated with the providers of affected transportation facilities.
7

8 (D) Dedication of land for roads, transit facilities, sidewalks, bikeways, paths,
9 or accessways may be required where the existing transportation system will
10 be impacted by or is inadequate to handle the additional burden caused by the
11 proposed use.
12

13 In the *Final Order on the ASC*, the Council found that, while the facility would generate a
14 significant increase in trip generation during construction, that the increase would be
15 temporary and would not constitute an undue burden on Umatilla County’s public
16 transportation system.⁷⁷ In addition, the Council imposed Public Services Condition 2 (Condition
17 PRE-PS-02) requiring in relevant part, that the certificate holder prepare and implement a
18 county-specific Transportation and Traffic Plan that identifies expected traffic related impacts
19 and mitigation measures. Because traffic related impacts associated with the proposed RFA1
20 site boundary additions in Umatilla County are subject to compliance with previously imposed
21 conditions, the Department recommends the Council find that, subject to compliance with
22 Public Services Condition 2 (Condition PRE-PS-02), the proposed RFA1 site boundary additions
23 would continue to comply with UCDC 152.017.
24

25 UCDC 152.059, Land Use Decisions
26

27 *In an EFU zone the following uses may be permitted through a land use*
28 *decision via administrative review (§ 152.769) and subject to the applicable*
29 *criteria found in §152.617. Once approval is obtained a zoning permit (§*
30 *152.025) is necessary to finalize the decision.*
31

32 * * * * *
33

34 (C) Utility facilities necessary for public service, including associated
35 transmission lines as defined in ORS 469.300 and wetland waste treatment
36 systems but not including commercial facilities for the purpose of generating
37 electrical power for public use by sale or transmission or communication
38 towers over 200 feet in height. A utility facility necessary for public service
39 may be established as provided in § 152.617 (II) (7).
40

41 UCDC 152.059 provides that a utility facility necessary for public service, excluding a
42 commercial power generation facility or a transmission tower over 200 feet in height, is a use

⁷⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 189 of 10586.

1 permitted by right in Umatilla County’s EFU Zone. The criteria for whether a utility facility is
2 necessary for public service is provided under UCDC 152.617(II)(7). As described in more detail
3 below, these criteria mirror the underlying provisions of ORS 215.275, and the Council
4 previously determined that the transmission line qualifies as a utility facility necessary for
5 public service under that statute.

6
7 UCDC 152.059 requires a zoning permit for uses approved through administrative review. The
8 Council previously imposed Land Use Condition 3 (Condition GEN-LU-03) requiring that the
9 certificate holder, in relevant part, obtain a Zoning Permit for each tax lot in Umatilla County
10 crossed by facility components evaluated under UCDC 152.059 including transmission lines,
11 new roads, and substantially modified roads. This condition applies to proposed RFA1 site
12 boundary additions.

13
14 Because the Council previously determined that the facility is a permitted use in Umatilla
15 County’s EFU Zone, and because the Council previously imposed conditions ensuring
16 compliance with the applicable use standards that would also apply to the proposed RFA1 site
17 boundary additions, the Department recommends Council find that the proposed RFA1 site
18 boundary additions would comply with UCDC 152.059.

19
20 UCDC 152.085, GF Zone, Conditional Uses Permitted.

21
22 *In the GF Zone, the following uses may be permitted conditionally via*
23 *administrative review (§ 152.769), subject to the requirements of § 152.086,*
24 *applicable supplementary regulations in §§ 152.010 through 152.016 and §§*
25 *152.545 through 152.562, and applicable §§ 152.610 through 152.615.*
26 *Specific standards for some of the conditional uses listed below are contained*
27 *in § 152.616. A zoning permit is required following the approval of a*
28 *conditional use pursuant to § 152.025. Existing uses classified as conditional*
29 *use and listed in this section may be expanded subject to administrative*
30 *review and subject to the requirements listed in this section, except*
31 *expansions on a parcel or tract meeting the definition of high value farmland*
32 *will not be permitted.*

33
34 * * * * *

35
36 (S) Utilities:

37
38 * * * * *

39
40 (5) *New electric transmission lines on land predominately in forest use with*
41 *right of way widths of up to 100 feet as specified in ORS 772.210. New*
42 *distribution lines on land predominately in forest use (e.g., gas, oil,*
43 *geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in*
44 *width on land predominately in forest use.*

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* * * * *

Umatilla County’s Grazing/Farm (GF) Zone is a hybrid zone that includes forest land, farmland, and rangeland. The Council previously evaluated all portions of the facility located in Umatilla County’s GF Zone as being located on lands predominately in forest use.⁷⁸

In the *Final Order on the ASC*, the Council found that there were no criteria applicable to the proposed facility for Umatilla County’s GF Zone, and instead, evaluated those components directly for compliance with OAR 660-006-0025 as a new electric transmission line with a right-of-way width up to 100 feet as specified in ORS 772.210, as described under OAR 660-006-0025(4).⁷⁹

In 2022, UCDC 152.085 was amended to clarify that new electric lines with right-of-way widths of up to 100 feet were a conditionally permitted use on lands predominately in forest use within the GF Zone as specified in ORS 772.210.⁸⁰ The relevant language in the revised ordinance mirrors the language in OAR 660-006-0025(4)(q), therefore the Council’s previous findings are relevant to the evaluation of compliance with UCDC 152.085.

UCDC 152.085(S)(5) provides that “a new electric transmission line with a right-of-way width of up to 100 feet *as specified in ORS 772.210* (emphasis added)” is a conditionally authorized use in forest lands in Umatilla County’s GF Zone.

ORS 772.210 authorizes a public utility to condemn lands for the construction of a service facility that is reasonably necessary for its conduct. The statute provides, in relevant part, as follows:

(1) Any public utility, electrical cooperative association or transmission company may:

* * *

(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities. If the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, any public utility or

⁷⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 177 of 10586. Facility components sited on lands predominately in farm use in the GF Zone would be evaluated under UCDC Section 152.084, which provides that a utility facility necessary for public service, other than commercial utilities, is an outright permitted use in Umatilla County’s GF Zone, subject to the standards provided in UCDC 152.617(II)(7).

⁷⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 178 of 10586.

⁸⁰ Umatilla County Ordinance [2022-09](#).

1 transmission company organized for the purpose of building, maintaining and
2 operating a line of poles and wires for the transmission of electricity for
3 lighting or power purposes may condemn such trees for a width not exceeding
4 300 feet, as may be necessary or convenient for such purpose.

5
6 (2) Notwithstanding subsection (1) of this section, any public utility, electrical
7 cooperative association or transmission company may, when necessary or
8 convenient for transmission lines (including poles, towers, wires, supports and
9 necessary equipment therefor) designed for voltages in excess of 330,000
10 volts, condemn land not to exceed 300 feet in width. In addition, if the lands
11 are covered by trees that are liable to fall and constitute a hazard to its wire
12 or line, such public utility or transmission company may condemn such trees
13 for a width not exceeding 100 feet on either side of the condemned land, as
14 may be necessary or convenient for such purpose.

15
16 * * * * *

17
18 In the *Final Order on the ASC*, the Council found that while the proposed right-of-way of the
19 transmission line would exceed 100 feet, that the facility would still qualify as a conditionally
20 allowed use under OAR 660-006-0025(4)(q) because ORS 772.210(2) specifically authorizes a
21 300-foot right of way for high voltage transmission lines rated to carry more than 330-
22 kilovolts.⁸¹ To ensure that the facility would be designed and constructed in accordance with
23 that subsection, the Council imposed Site Certificate Condition GEN-LU-12, which limits the
24 right of way to 300 feet and limits activities other than vegetation management to the central
25 100 feet of the right-of-way.

26
27 The Council also found that permanent related or supporting facilities, new and substantially
28 modified roads, located outside of the 300-foot right-of-way could not be considered allowed
29 uses under OAR 660-006-0025(4)(q) and would require an exception to Statewide Planning Goal
30 4 be taken.

31
32 Because portions of the proposed RFA1 site boundary additions are located in Umatilla
33 County's GF Zone outside of the 300-foot transmission line right-of-way, the Department
34 recommends the Council find that the proposed RFA1 site boundary additions are not an
35 allowed use under UCDC 152.085(S)(5), and that an exception to Statewide Planning Goal 4 is
36 required.

37
38 UCDC 152.086 Limitations on Conditional Uses.

39
40 *The following limitations shall apply, if determined appropriate, to all*
41 *conditional uses in the GF Zone as found in OAR 660-006-0025 (5), except as*

⁸¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 269 of 10586.

1 *noted for nonfarm dwellings in § 152.059 (K) (8) and referenced in §152.084*
2 *(K) (I):*

3
4 *(A) The proposed use will not force a significant change in, or significantly*
5 *increase the cost of, accepted farming or forest practices on agriculture or*
6 *forest lands;*

7
8 *(B) The proposed use will not significantly increase fire hazard or significantly*
9 *increase fire suppression costs or significantly increase risks to fire suppression*
10 *personnel; and*

11
12 *(C) A written statement (i.e. Covenant Not to Sue Agreement) recorded with*
13 *the deed or written contract with the County or its equivalent is obtained from*
14 *the land owner that recognizes the rights of adjacent and nearby land owners*
15 *to conduct forest operations consistent with the Forest Practices Act and Rules*
16 *for uses authorized in § 152.085 (C) (1), (AA), (G), (I), and (EE) of this chapter.*
17

18 In the *Final Order on the ASC*, the Council evaluated the facility for compliance with OAR 660-
19 006-0025(5), which is implemented by UCDC 152.086 in the revised Umatilla County
20 Development Code. The Council previously imposed Land Use Condition 16 (Condition GEN-LU-
21 13) requiring that the certificate holder prepare and implement a Right-of-Way Clearing
22 Assessment that identifies mitigation measures to minimize potential impacts to, and the cost
23 of, accepted forest practices. The Council found that, subject to compliance with this condition,
24 that the facility would not result in significant adverse impacts to accepted forest practices nor
25 result in a significant increase in the cost of accepted forest practices within the surrounding
26 area.⁸²

27
28 The Council also imposed Public Services Condition 6 (Conditions GEN-PS-02), requiring that the
29 certificate holder prepare and implement a Fire Prevention and Suppression Plan; and Fish and
30 Wildlife Condition 2 (Condition GEN-FW-02), requiring that the certificate holder prepare and
31 implement a Vegetation Management Plan. The Council found that, subject to compliance with
32 the Fire Prevention and Suppression Plan, the impact minimization measures included in the
33 Right of Way Clearing Assessment, and Vegetation Management Plan, that the proposed use
34 would not significantly increase the wildfire hazards, fire suppression costs, or risk to fire
35 suppression personnel within the surrounding area.⁸³

36
37 As described above, the facility is a use authorized under UCDC 152.085(S)(5), so UCDC
38 152.086(C) is not applicable to the review of the facility, or the proposed RFA1 site boundary
39 additions.
40

⁸² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 276 of 10586.

⁸³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 279 of 10586.

1 The proposed RFA1 site boundary additions are not expected to significantly increase the
2 amount of land taken out of forest use in Umatilla County, and impacts to lands in Umatilla
3 County's GF Zone would be addressed in the plans required under Land Use Condition 16
4 (Condition GEN-LU-13); Public Services Condition 6 (Conditions GEN-PS-02); and Fish and
5 Wildlife Condition 2 (Condition GEN-FW-02). Subject to compliance with these conditions, the
6 Department recommends Council find that the proposed RFA1 site boundary additions comply
7 with UCDC 152.086.

8
9 UCDC 152.617(II)(7), Standards for Review: Utility Facility Necessary for Public Service.

10
11 *(A) A utility facility established under ORS 215.283 (1)(c) is necessary for public*
12 *service if the facility must be sited in an exclusive farm use zone in order to*
13 *provide the service. To demonstrate that a utility facility is necessary, an*
14 *applicant must:*

15
16 *(1) Demonstrate that reasonable alternatives have been considered and that*
17 *the facility must be sited in an exclusive farm use zone due to one or more of*
18 *the following factors:*

19
20 *(a) Information provided in the technical and engineering feasibility;*

21
22 *(b) The proposed facility is locationally dependent. (It must cross land in one or*
23 *more areas zoned for exclusive farm use in order to achieve a reasonably*
24 *direct route or to meet unique geographical needs that cannot be satisfied on*
25 *other lands.)*

26
27 *(c) Show a lack of available urban and non-resource lands;*

28
29 *(d) Due to availability of existing rights of way.*

30
31 *(e) Due to public health and safety concerns; and*

32
33 *(f) Show it must meet other requirements of state and federal agencies.*

34
35 *(2) Costs associated with any of the factors listed in subsection (A) above may*
36 *be considered, but cost alone, including the cost of land, may not be the only*
37 *consideration in determining that a utility facility is necessary for public*
38 *service. Land costs shall not be included when considering alternative*
39 *locations for substantially similar utility facilities and the siting of utility*
40 *facilities that are not substantially similar.*

41
42 *(3) The owner of a utility facility approved under this section shall be*
43 *responsible for restoring, as nearly as possible, to its former condition any*
44 *agricultural land and associated improvements that are damaged or*

1 otherwise disturbed by the siting, maintenance, repair or reconstruction of the
2 facility. Nothing in this paragraph shall prevent the owner of the utility facility
3 from requiring a bond or other security from a contractor or otherwise
4 imposing on a contractor the responsibility for restoration.

5
6 (4) The governing body of the county or its designee shall impose clear and
7 objective conditions on an application for utility facility siting to mitigate and
8 Umatilla County Development Code, Revision Date July 19, 2022, Page 396 of
9 481 minimize the impacts of the proposed facility, if any, on surrounding lands
10 devoted to farm use in order to prevent a significant change in accepted farm
11 practices or a significant increase in the cost of farm practices on surrounding
12 farmlands.

13
14 (5) Utility facilities necessary for public service may include on-site and offsite
15 facilities for temporary workforce housing for workers constructing a utility
16 facility. Such facilities must be removed or converted to an allowed use under
17 OAR 660-033-0130 (19) or other statute or rule when project construction is
18 complete. Offsite facilities allowed under this paragraph are subject to OAR
19 660-033-0130 (5). Temporary workforce housing facilities not included in the
20 initial approval may be considered through a minor amendment request. A
21 minor amendment request shall have no effect on the original approval.

22
23 (6) In addition to the provisions of paragraphs (1) to (4) of this subsection, the
24 establishment or extension of a sewer system as defined by OAR 660-011-
25 0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of
26 OAR 660-011-0060. (7) The provisions of paragraphs (1) to (4) of this
27 subsection do not apply to interstate natural gas pipelines and associated
28 facilities authorized by and subject to regulation by the Federal Energy
29 Regulatory Commission.

30
31 UCDC 152.617(II)(7) provides the criteria to determine whether a utility facility located in
32 Umatilla County’s EFU zone is necessary for public service. These criteria mirror the underlying
33 provisions of ORS 215.275. In the *Final Order on the ASC*, the Council determined that the
34 transmission line qualifies as a utility facility necessary for public service under ORS 215.275
35 because there was no reasonably direct route that would allow the applicant to construct the
36 transmission line while avoiding all impacts to EFU zoned land, that the that the applicant had
37 demonstrated a “lack of available non-resource lands” for which to site the proposed facility;
38 and that the applicant had proposed the route to utilize some available rights-of-ways.⁸⁴ The

⁸⁴ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 255-256 of 10586.

1 Council also determined that access roads and other ancillary facilities located in Umatilla
2 County’s EFU Zone were to be evaluated as accessory uses to the transmission line.⁸⁵

3
4 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 15 acres
5 of temporary and permanent impacts to agricultural lands in Umatilla County.⁸⁶ Proposed RFA1
6 site boundary additions would result in less than 11 acres of temporary and permanent impacts
7 to agricultural lands, and would not be additive to the previously evaluated impacts for the
8 facility. In other words, the proposed RFA1 site boundary additions would not increase impacts
9 to agricultural lands, but rather a shift in the location of impacts. For these reasons, the
10 proposed RFA1 site boundary additions do not significantly change the nature or extent of the
11 use. Accordingly, the Department recommends that the Council find the proposed RFA1 site
12 boundary additions located in Umatilla County’s EFU zone continues to qualify as utility
13 facilities necessary for public service.

14
15 UCDC 152.617(II)(7)(4) requires the County, or in this case, the Council, to impose clear
16 and objective conditions to mitigate and minimize the impacts of the facility on
17 surrounding lands devoted to farm use in order to prevent a significant change in
18 accepted farm practices or a significant increase in the cost of farm practices on
19 surrounding farmlands.

20
21 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11) requiring that
22 the certificate holder prepare and implement an Agricultural Assessment and Mitigation Plan
23 prescribing monitoring and mitigation of impacts to soils and activities. This condition applies to
24 the proposed RFA1 site boundary additions.

25
26 UCCCP, Chapter 8, Finding and Policy 37

27
28 *Finding. Areas specifically set aside for natural resource exploitation, future*
29 *development of reservoirs, energy generation and transmission facilities and*
30 *industry will lower the cost of eventual use, as compared to allowing*
31 *incompatible development on the same lands before such eventual use.*

32
33 *Policy. The County shall ensure compatible interim uses provided through*
34 *Development Ordinance standards, and where applicable consider*
35 *agriculturally designated land as open space for appropriate and eventual*
36 *resource or energy facilities use.*

37

⁸⁵ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 176 of 10586, citing, *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

⁸⁶ B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.5.5.4 Table K-14, p. K-193.

1 In the *Final Order on the ASC*, the Council found that the facility is consistent with UCCP Chapter
2 8, Policy 37 because the facility is primarily located on agriculturally designated land within
3 Umatilla County and the policy designates that land as appropriate for energy facility use.⁸⁷
4

5 The proposed RFA1 site boundary additions do not significantly change the nature or extent of
6 the use. Accordingly, the Department recommends that the Council continue to rely on its
7 previous findings.
8

9 Umatilla County Comprehensive Plan, Chapter 14, Finding and Policy 19

10
11 *Finding. Utility facilities can remove valuable resource lands and create*
12 *development problems for new developments and detract from existing*
13 *development.*

14
15 *Policy. Where feasible, all utility lines and facilities shall be located on or*
16 *adjacent to existing public or private rights-of-way so as to avoid dividing*
17 *existing farm or forest units; and transmission lines should be located within*
18 *existing corridors as much as possible.*
19

20 In the *Final Order on the ASC*, the Council found that while the applicant had designed the route
21 to avoid dividing existing farm or forest units to the extent feasible, the use of existing rights-of-
22 way was not feasible due to minimum separation distances for high voltage transmission lines
23 as established by the North American Electric Reliability Corporation (NERC) and the Western
24 Electricity Coordinating Council (WECC) reliability requirements. Because the certificate holder
25 had demonstrated that it evaluated feasibility of using existing ROWs, the Council found that
26 the facility was consistent with UCCP, Chapter 14, Policy 19.
27

28 The proposed RFA1 site boundary additions do not move the transmission line route into
29 existing rights-of-way, but also do not significantly change the nature or extent of the use
30 outside of existing rights-of-way. Accordingly, the Department recommends that the Council
31 continue to rely on its previous findings.
32

33 Umatilla County Comprehensive Plan, Chapter 15, Finding and Policy 18.

34
35 *Finding. Major transmission lines (fuel, power and communication) traverse*
36 *the County. Additional expansion proposed, and additional new lines or*
37 *pipelines could be proposed through the County.*

38
39 *Policy. The County will review right-of-way acquisitions and proposals for*
40 *transmission lines and pipelines so as to minimize adverse impacts on the*
41 *community.*
42

⁸⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 191 of 10586.

1 In the *Final Order on the ASC*, the Council found that, as a SAG, the Umatilla County Board of
2 Commissioners had the opportunity to review the ASC and Council findings consistent with
3 Umatilla County Comprehensive Plan Chapter 15, finding and policy 20, which have been
4 renumbered as Finding and Policy 18.

5
6 All SAGs, including the Umatilla County Board of Commissioners, will also have the opportunity
7 to review this order. Therefore, the Department recommends the Council find that the
8 proposed RFA1 site boundary additions will continue to be consistent with Umatilla County
9 Comprehensive Plan, Chapter 15, Finding and Policy 18.

10
11 *III.E.1.c Union County Applicable Substantive Criteria*

12
13 The proposed RFA1 site boundary additions in Union County are associated with design changes
14 to 1.8 miles of access roads located in open rangeland and forested areas. The changes would
15 include substantial improvements to 0.4 miles of existing road and the construction of 1.4 miles
16 of new access roads and would permanently impact approximately 2.9 acres.

17
18 In the *Final Order on the ASC*, the Council evaluated the facility’s compliance with applicable
19 provisions of Union County Zoning, Partition, and Subdivision Ordinance (UCZPSO) Article 2.00
20 (A-1 Exclusive Farm Use Zone), Article 3.00 (A-2 Agriculture-Grazing Zone), Article 5.00 (A-4
21 Timber-Grazing Zone) and Article 20.00 (Supplemental Provisions), and Article 21.00
22 (Conditional Uses).

23
24 The Union County Board of Commissioners did not identify policies, findings, or goals from the
25 Union County Comprehensive Plan that would apply to the facility during the review of the ASC.
26 Accordingly, the Council relies solely upon the UCZPSO for the applicable substantive criteria for
27 the evaluation of facility components in Union County.

28
29 The Union County Board of Commissioners has adopted ordinances amending the UCZPSO
30 since the submission of the initial preliminary ASC on February 27, 2013. Notably, in June 2015,
31 Union County Ordinance 2015-01 replaced Union County’s resource zone ordinances. As a
32 result, several sections of UCZPSO Articles 2.00, 3.00, and 5.00 have been renumbered.

33
34 The proposed RFA1 site boundary additions in Union County are located in Union County’s A-1,
35 A-2, and A-4 Zones. The applicable substantive criteria applicable to the review of the additions
36 are listed in Table 12: *Union County Applicable Substantive Criteria* below.

Table 12: Union County Applicable Substantive Criteria

Section	Description
Union County Zoning, Partition, and Subdivision Ordinance (UCZPSO)	
Article 2.00	A-1 Exclusive Farm Use Zone
Section 2.04	Conditional Uses with General Review Criteria
Section 2.05	Use Standards
Article 3.00	Agriculture-Grazing Zone

Table 12: Union County Applicable Substantive Criteria

Section	Description
Section 3.04	Conditional Uses with General Review Criteria
Section 3.05	Use Standards
Article 5.00	Timber-Grazing Zone
Section 5.04	Conditional Uses with General Review Criteria
Section 5.06	Conditional Use Review Criteria
Section 5.08	Development and Fire Siting Standards
Article 20.00	Supplemental Provisions
Section 20.08	Riparian Zone Setbacks
Section 20.09	Significant Goal 5 Resource Areas
Article 21.00	Conditional Uses
Section 21.06	General Standards Governing Conditional Uses

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UCZPSO 2.04, Conditional Uses with General Review Criteria

In the A-1 Zone, the following uses and their accessory buildings and uses are permitted subject to county review under Article 24.03 Quasi-Judicial land use decision and the specific standards for the use set forth in Section 2.05, as well as the general standards for the zone and the applicable standards in Article 21.00 (Conditional Uses).

* * * * *

11. Utility facilities necessary for public service, including associated transmission lines as defined in Section 1.08 and wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height as provided in Subsection 2.05.15.

In the *Final Order on the ASC*, the Council determined that the portion of the facility, including related and supporting facilities, located in Union County’s A-1 Zone, was a utility facility necessary for public service.⁸⁸ Because the proposed RFA1 site boundary additions do not significantly modify the underlying use, the Department recommends the Council continue to rely on that determination.

At the time the *Final Order on the ASC* was issued, a utility facility necessary for public service was considered an “administrative use” under UCZPSO 2.03. In 2015, Union County Ordinance 2015-01 replaced Union County’s resource zone ordinances. The new ordinance classifies a utility facility necessary for public service as a conditional use subject to the standards set forth in UCZPSO 2.05.15. Notwithstanding the language in the County’s code, the conditional use

⁸⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 193.

1 requirements beyond those that are consistent with ORS 215.275 are not applicable to facility
2 components because, as a utility facility necessary for public service under ORS 215.283(1)(c),
3 the use is permitted subject only to the requirements of ORS 215.275 and the county cannot
4 impose additional approval criteria. For these reasons, the Department recommends Council
5 not make findings of compliance for the conditional use requirements under UCZPSO 2.06.

6
7 UCZPSO 2.05, Use Standards

8
9 *15. A utility facility that is necessary for public service*

10
11 *A. A utility facility is necessary for public service if the facility must be sited in*
12 *the exclusive farm use zone in order to provide the service. To demonstrate*
13 *that a utility facility is necessary, an applicant must show that reasonable*
14 *alternatives have been considered and that the facility must be sited in an*
15 *exclusive farm use zone due to one or more of the following factors:*

16
17 *(1) Technical and engineering feasibility;*

18
19 *(2) The proposed facility is locationally-dependent. A utility facility is*
20 *locationally-dependent if it must cross land in one or more areas zoned for*
21 *exclusive farm use in order to achieve a reasonably direct route or to meet*
22 *unique geographical needs that cannot be satisfied on other lands;*

23
24 *(3) Lack of available urban and non-resource lands;*

25
26 *(4) Availability of existing rights of way;*

27
28 *(5) Public health and safety; and*

29
30 *(6) Other requirements of state and federal agencies.*

31
32 *B. Costs associated with any of the factors listed in subparagraph A. of this*
33 *paragraph may be considered, but cost alone may not be the only*
34 *consideration in determining that a utility facility is necessary for public*
35 *service. Land costs shall not be included when considering alternative*
36 *locations for substantially similar utility facilities and the siting of utility*
37 *facilities that are not substantially similar.*

38
39 *C. The owner of a utility facility approved under paragraph A shall be*
40 *responsible for restoring, as nearly as possible, to its former condition any*
41 *agricultural land and associated improvements that are damaged or*
42 *otherwise disturbed by the Article 2.00 Page 15 siting, maintenance, repair or*
43 *reconstruction of the facility. Nothing in this paragraph shall prevent the*
44 *owner of the utility facility from requiring a bond or other security from a*

1 contractor or otherwise imposing on a contractor the responsibility for
2 restoration.

3
4 *D. The county shall impose clear and objective conditions on an application for*
5 *utility facility siting to mitigate and minimize the impacts of the proposed*
6 *facility, if any, on surrounding lands devoted to farm use in order to prevent a*
7 *significant change in accepted farm practices or a significant increase in the*
8 *cost of farm practices on surrounding farmlands.*

9
10 *E. Utility facilities necessary for public service may include on-site and off-site*
11 *facilities for temporary workforce housing for workers constructing a utility*
12 *facility. Such facilities must be removed or converted to an allowed use under*
13 *the A-1 Zone or other statute or rule when project construction is complete.*
14 *Off-site facilities allowed under this paragraph are subject to Section 2.06*
15 *Conditional Use Review Criteria. Temporary workforce housing facilities not*
16 *included in the initial approval may be considered through a minor*
17 *amendment request. A minor amendment request shall have no effect on the*
18 *original approval.*

19
20 *F. In addition to the provisions of subparagraphs A to D of this paragraph, the*
21 *establishment or extension of a sewer system as defined by OAR 660-011-*
22 *0060(1)(f) shall be subject to the provisions of 660-011-0060.*

23
24 *G. The provisions of subparagraphs A to D of this paragraph do not apply to*
25 *interstate natural gas pipelines and associated facilities authorized by and*
26 *subject to regulation by the Federal Energy Regulatory Commission.*

27
28 UCZPSO 2.04 provides that a utility facility necessary for public service, excluding a commercial
29 power generation facility or a transmission tower over 200 feet in height, is a conditionally
30 permitted use permitted by right in Union County’s A-1 Zone. The criteria for whether a utility
31 facility is necessary for public service is provided under UCZPSO 2.05. These criteria mirror the
32 underlying provisions of ORS 215.275. In the *Final Order on the ASC*, the Council determined
33 that the transmission line qualifies as a utility facility necessary for public service under ORS
34 215.275 because there was no reasonably direct route that would allow the applicant to
35 construct the transmission line while avoiding all impacts to EFU zoned land, that the applicant
36 had demonstrated a “lack of available nonresource lands” on which to site the proposed
37 facility; and that the applicant had proposed the route to utilize some available rights-of-
38 ways.⁸⁹ The Council also determined that access roads and other ancillary facilities located in
39 Union County’s A-1 Zone were to be evaluated as accessory uses to the transmission line.⁹⁰

⁸⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p.255-256 of 10586.

⁹⁰ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 199 of 10586, citing *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are

1
2 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 116 acres
3 of temporary and permanent impacts to agricultural lands in Union County.⁹¹ Proposed RFA1
4 site boundary additions would result in less than 7 acres of temporary and permanent impacts
5 to agricultural lands, and would not be additive to the previously evaluated impacts for the
6 facility. The proposed RFA1 site boundary additions do not significantly change the nature or
7 extent of the use. Accordingly, the Department recommends that the Council continue to rely
8 on its previous findings that the proposed RFA1 site boundary additions located in Union
9 County’s A-1 Zone continue to qualify as utility facilities necessary for public service.

10
11 UCZPSO 2.05.15.D requires the County, or in this case, the Council, to impose clear and
12 objective conditions to mitigate and minimize the impacts of the proposed facility on
13 surrounding lands devoted to farm use in order to prevent a significant change in
14 accepted farm practices or a significant increase in the cost of farm practices on
15 surrounding farmlands.

16
17 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11) requiring that
18 the certificate holder prepare and implement an Agricultural Assessment and Mitigation Plan
19 prescribing monitoring and mitigation of impacts to soils and activities. This condition would
20 apply to the proposed RFA1 site boundary additions.

21
22 Because the Council previously determined that the facility is a permitted use in Union County’s
23 A-1 Zone, and because the Council previously imposed conditions ensuring compliance with the
24 applicable use standards that would also apply to the proposed RFA1 site boundary additions,
25 the Department recommends that the proposed RFA1 site boundary additions would comply
26 with UCZPSO 2.05.

27
28 UCZPSO 3.04, Conditional Uses with General Review Criteria

29
30 *In the A-2 Zone, the following uses and their accessory buildings and uses are*
31 *permitted subject to county review under Article 24.03 Quasi-Judicial land use*
32 *decision and the specific standards for the use set forth in Section 3.05, as well*
33 *as the general standards for the zone and the applicable standards in Article*
34 *21.00 (Conditional Uses).*

35
36 * * * * *

37
38 *11. Utility facilities necessary for public service, including associated*
39 *transmission lines as defined in Section 1.08 and wetland waste treatment*
40 *systems, but not including commercial facilities for the purpose of generating*

considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

⁹¹ B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.6.5.4 Table K-22, p. K-264.

1 *electrical power for public use by sale or transmission towers over 200 feet in*
2 *height as provided in Subsection 3.05.15.*

3
4 In the *Final Order on the ASC*, the Council determined that the portion of the facility, including
5 related and supporting facilities, located in Union County’s A-2 Zone, was a utility facility
6 necessary for public service.⁹² Because the proposed RFA1 site boundary additions do not
7 significantly modify the underlying use, the Department recommends the Council continue to
8 rely on that determination.

9
10 At the time the *Final Order on the ASC* was issued, a utility facility necessary for public service
11 was considered an “administrative use” under UCZPSO 3.03.

12
13 In 2015, Union County Ordinance 2015-01 replaced Union County’s resource zone ordinances.
14 The new ordinance classifies a utility facility necessary for public service as a conditional use
15 subject to the standards set forth in UCZPSO 3.05.15. Notwithstanding the language in the
16 County’s code, the conditional use requirements beyond those that are consistent with ORS
17 215.275 are not applicable to facility components because, as a utility facility necessary for
18 public service under ORS 215.283(1)(c), the use is permitted subject only to the requirements of
19 ORS 215.275 and the county cannot impose additional approval criteria. For these reasons, the
20 Department recommends Council not make findings of compliance for the conditional use
21 requirements under UCZPSO 3.17.

22
23 UCZPSO 3.05, Use Standards

24 * * * * *

25
26
27 *15. A utility facility that is necessary for public service*

28
29 *A. A utility facility is necessary for public service if the facility must be sited in*
30 *the exclusive farm use zone in order to provide the service. To demonstrate*
31 *that a utility facility is necessary, an applicant must show that reasonable*
32 *alternatives have been considered and that the facility must be sited in an*
33 *exclusive farm use zone due to one or more of the following factors:*

34
35 *(1) Technical and engineering feasibility;*

36
37 *(2) The proposed facility is locationally-dependent. A utility facility is*
38 *locationally-dependent if it must cross land in one or more areas zoned for*
39 *exclusive farm use in order to achieve a reasonably direct route or to meet*
40 *unique geographical needs that cannot be satisfied on other lands;*

41
42 *(3) Lack of available urban and non-resource lands;*

⁹² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 200 of 10586.

1
2 (4) Availability of existing rights of way;

3
4 (5) Public health and safety; and

5
6 (6) Other requirements of state and federal agencies.

7
8 *B. Costs associated with any of the factors listed in subparagraph A. of this*
9 *paragraph may be considered, but cost alone may not be the only*
10 *consideration in determining that a utility facility is necessary for public*
11 *service. Land costs shall not be included when considering alternative*
12 *locations for substantially similar utility facilities and the siting of utility*
13 *facilities that are not substantially similar.*

14
15 *C. The owner of a utility facility approved under paragraph A shall be*
16 *responsible for restoring, as nearly as possible, to its former condition any*
17 *agricultural land and associated improvements that are damaged or*
18 *otherwise disturbed by the siting, maintenance, repair or reconstruction of the*
19 *facility. Nothing in this paragraph shall prevent the owner of the utility facility*
20 *from requiring a bond or other security from a contractor or otherwise*
21 *imposing on a contractor the responsibility for restoration.*

22
23 *D. The county shall impose clear and objective conditions on an application for*
24 *utility facility siting to mitigate and minimize the impacts of the proposed*
25 *facility, if any, on surrounding lands devoted to farm use in order to prevent a*
26 *significant change in accepted farm practices or a significant increase in the*
27 *cost of farm practices on surrounding farmlands.*

28
29 *E. Utility facilities necessary for public service may include on-site and off-site*
30 *facilities for temporary workforce housing for workers constructing a utility*
31 *facility. Such facilities must be removed or converted to an allowed use under*
32 *the A-1 Zone or other statute or rule when project construction is complete.*
33 *Off-site facilities allowed under this paragraph are subject to Section 2.06*
34 *Conditional Use Review Criteria. Temporary workforce housing facilities not*
35 *included in the initial approval may be considered through a minor*
36 *amendment request. A minor amendment request shall have no effect on the*
37 *original approval.*

38
39 * * * * *

40
41 UCZPSO 3.04 provides that a utility facility necessary for public service, excluding a commercial
42 power generation facility or a transmission tower over 200 feet in height, is a use permitted by
43 right in Union County’s A-2 Zone. The criteria for whether a utility facility is necessary for public
44 service is provided under UCZPSO 3.05.15. These criteria mirror the underlying provisions of

1 ORS 215.275. In the Final Order on the ASC, the Council determined that the transmission line
2 qualifies as a utility facility necessary for public service under ORS 215.275 because there was
3 no reasonably direct route that would allow the applicant to construct the transmission line
4 while avoiding all impacts to EFU zoned land, that the that the applicant had demonstrated a
5 “lack of available nonresource lands” for which to site the proposed facility; and that the
6 applicant had proposed the route to utilize some available rights-of-ways.⁹³
7

8 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 116 acres
9 of temporary and permanent impacts to A-2 zoned lands in Union County.⁹⁴ Proposed RFA1 site
10 boundary additions would result in less than 7 acres of temporary and permanent impacts to A-
11 2 zoned lands, and would not be additive to the previously evaluated impacts for the facility.
12 The proposed RFA1 site boundary additions do not significantly change the nature or extent of
13 the use. Accordingly, the Department recommends that the Council continue to rely on its
14 previous findings that the proposed RFA1 site boundary additions located in Union County’s A-2
15 Zone continue to qualify as utility facilities necessary for public service.
16

17 UCZPSO 3.05.15.D requires the County, or in this case, the Council, to impose clear and
18 objective conditions to mitigate and minimize the impacts of the proposed facility on
19 surrounding lands devoted to farm use in order to prevent a significant change in
20 accepted farm practices or a significant increase in the cost of farm practices on
21 surrounding farmlands.
22

23 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11), which requires
24 the certificate holder to prepare and implement an Agricultural Assessment and Mitigation Plan
25 prescribing monitoring and mitigation of impacts to soils and activities. This condition applies to
26 the proposed RFA1 site boundary additions.
27

28 Because the Council previously determined that the facility is a permitted use in Union County’s
29 A-2 Zone, and because the Council previously imposed conditions ensuring compliance with the
30 applicable use standards also apply to the proposed RFA1 site boundary additions, the
31 Department recommends Council find that the proposed RFA1 site boundary additions comply
32 with UCZPSO 3.05.
33

34 UCZPSO 3.17, Development Standards
35

36 *The following standards shall apply to all development in an A-2 Agriculture-*
37 *Grazing Zone.*
38

- 39 *1. Any proposed division of land included within the A-2 Zone resulting in the*
40 *creation of one or more parcels of land shall be reviewed and approved or*
41 *disapproved by the County (ORS 215.263).*

⁹³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 255-256 of 10586.

⁹⁴ B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.6.5.4 Table K-22, p. K-264.

1
2 2. Setbacks from property lines or road rights-of-way shall be a minimum of
3 20-foot front and rear yards and 10-foot side yards.

4
5 3. Animal shelters shall not be located closer than 100 feet to an R-1 or R-2
6 Zone.

7
8 4. Signs shall be limited to the following:

9
10 A. All off-premise signs within view of any State Highway shall be regulated by
11 State regulation under ORS Chapter 377 and receive building permit approval.

12
13 B All on premise signs shall meet the Oregon Administrative Rule regulations
14 for on premise signs which have the following standards:

15
16 (1) Maximum total sign area for one business is 8% of building area plus
17 utilized parking area, or 2,000 square feet, whichever is less.

18
19 (2) Display area maximum is 825 square feet for each face of any one sign, or
20 half the total allowable sign area, whichever is less.

21
22 (3) Businesses which have no buildings located on the premises or have
23 buildings and parking area allowing a sign area of less than 250 square feet
24 may erect and maintain on-premises signs with the total allowable area of
25 250 square feet, 125 square feet maximum for any one face of a sign.

26
27 (4) Maximum height of freestanding signs adjacent to interstate highways is
28 65 feet, for all other highways is 35 feet, measured from the highway surface
29 or the premises grade, whichever is higher to the top of the sign.

30
31 C. All on premise signs within view or 660 feet of any State Highway shall
32 obtain permit approval from the Permit Unit, Oregon State Highway Division.
33 No sign shall be moving, revolving or flashing, and all lighting shall be directed
34 away from residential use or zones, and shall not be located so as to detract
35 from a motorist vision except for emergency purposes.

36
37 In the *Final Order on the ASC*, the Council imposed Land Use Condition 7 (Condition GEN-LU-06)
38 requiring that the certificate holder construct the facility consistent with the requirements of
39 UCZPSO 3.08, which has been renumbered as UCZPSO 3.17. This condition applies to the
40 proposed RFA1 site boundary additions.

41
42 Because the Council previously imposed conditions that would ensure compliance with its
43 provisions, the Department recommends that the Council find the proposed RFA1 site
44 boundary additions would comply with UCZPSO 3.17.

1
2 UCZPSO 5.04, Conditional Uses with General Review Criteria
3

4 *In the A-4 Zone predominantly farmland lots and parcels shall comply with*
5 *Section 5.06 Administrative Uses and predominantly forest land parcels may*
6 *authorize the following uses and activities and their accessory buildings and*
7 *uses subject to county review and the specific standards set forth in Article*
8 *21.00, as well as the general provision set forth by this ordinance.*
9

10 * * * * *

11 *21. New electric transmission lines with right of way widths of up to 100 feet*
12 *as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal,*
13 *telephone, fiber optic cable) with rights-of-way of 50 feet or less in width.*
14

15 * * * * *

16
17 Union County’s A-4 Zone is a hybrid zone that includes forest land, farmland, and rangeland.
18 The Council previously evaluated portions of the facility located in Union County’s A-4 Zone
19 based on the predominant use of each parcel the facility was proposed to be sited on.⁹⁵ Based
20 on the certificate holder’s analysis supporting the ASC, the proposed RFA1 site boundary
21 additions associated with modifications to the road segments designated UN-002b and UN-034,
22 and the new road segment designated UN-625 would be located on lands predominantly under
23 forest use, where the remaining access road changes in Union County’s A-4 Zone would be in
24 open range land areas. As shown above, new electric transmission lines with rights-of-way
25 widths of up to 100 feet were a conditionally permitted use on lands predominately in forest
26 use within the A-4 Zone as specified in ORS 772.210.
27

28 ORS 772.210 authorizes a public utility to condemn lands for the construction of a service
29 facility that is reasonably necessary for its conduct. The statute provides, in relevant part, as
30 follows:
31

32 *(1) Any public utility, electrical cooperative association or transmission*
33 *company may:*
34

35 * * *

36
37 *(b) Condemn such lands not exceeding 100 feet in width for its lines (including*
38 *poles, towers, wires, supports and necessary equipment therefor) and in*
39 *addition thereto, other lands necessary and convenient for the purpose of*
40 *construction of service facilities. If the lands are covered by trees that are*
41 *liable to fall and constitute a hazard to its wire or line, any public utility or*
42 *transmission company organized for the purpose of building, maintaining and*

⁹⁵ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 203 of 10586.

1 *operating a line of poles and wires for the transmission of electricity for*
2 *lighting or power purposes may condemn such trees for a width not exceeding*
3 *300 feet, as may be necessary or convenient for such purpose.*

4
5 *(2) Notwithstanding subsection (1) of this section, any public utility, electrical*
6 *cooperative association or transmission company may, when necessary or*
7 *convenient for transmission lines (including poles, towers, wires, supports and*
8 *necessary equipment therefor) designed for voltages in excess of 330,000*
9 *volts, condemn land not to exceed 300 feet in width. In addition, if the lands*
10 *are covered by trees that are liable to fall and constitute a hazard to its wire*
11 *or line, such public utility or transmission company may condemn such trees*
12 *for a width not exceeding 100 feet on either side of the condemned land, as*
13 *may be necessary or convenient for such purpose.*

14
15 * * * * *

16
17 In the *Final Order on the ASC*, the Council found that while the proposed right-of-way of the
18 transmission line would exceed 100 feet, that the facility would still qualify as a conditionally
19 allowed use under OAR 660-006-0025(4)(q) because ORS 772.210(2) specifically authorizes a
20 300-foot right of way for high voltage transmission lines rated to carry more than 330-
21 kilovolts.⁹⁶ To ensure that the facility would be designed and constructed in accordance with
22 that subsection, the Council imposed Land Use Condition 15 (Condition GEN-LU-12), which
23 limits the right of way to 300 feet and limits activities other than vegetation management to
24 the central 100 feet of the right-of-way.

25
26 The Council also found that permanent related or supporting facilities, new and substantially
27 modified roads, located outside of the 300-foot right-of-way could not be considered allowed
28 uses under OAR 660-006-0025(4)(q) and would require an exception to Statewide Planning Goal
29 4 be taken.

30
31 Because portions of the proposed RFA1 site boundary additions in Union County’s A-4 Zone are
32 outside of the 300-foot transmission line right-of-way, the Department recommends the
33 Council find that that the proposed RFA1 site boundary additions do not comply with UCPSO
34 5.04 and that an exception to Statewide Planning Goal 4 is required.

35
36 UCZPSO 5.06, Conditional Use Review Criteria

37
38 *A use authorized by Section 5.04 of this zone may be allowed provided the*
39 *following requirements or their equivalent are met. These requirements are*
40 *designed to make the use compatible with forest operations and agriculture*
41 *and to conserve values found on forest lands.*
42

⁹⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 269 of 10586.

1 1. *The proposed use will not force a significant change in, or significantly*
2 *increase the cost of, accepted farming or forest practices on agriculture or*
3 *forest lands.*

4
5 2. *The proposed use will not significantly increase fire hazard or significantly*
6 *increase fire suppression costs or significantly increase risks to fire suppression*
7 *personnel.*

8
9 3. *A written statement recorded with the deed or written contract with the*
10 *county or its equivalent is obtained from the land owner that recognizes the*
11 *rights of adjacent and nearby land owners to conduct forest operations*
12 *consistent with the Forest Practices Act and Rules for uses authorized in OAR*
13 *660-006-0025 Subsection 5(c).*

14
15 In the *Final Order on the ASC*, the Council evaluated the facility for compliance with OAR 660-
16 006-0025(5), which is implemented by UCZPSO 5.06. The Council previously imposed Land Use
17 Condition 16 (Condition GEN-LU-13) requiring that the certificate holder finalize and implement
18 a Right-of-Way Clearing Assessment that identifies mitigation measures to minimize potential
19 impacts to, and the cost of, accepted forest practices. The Council found that, subject to
20 compliance with this condition, that the facility would not result in significant adverse impacts
21 to accepted forest practices nor result in a significant increase in the cost of accepted forest
22 practices within the surrounding area.⁹⁷

23
24 The Council also imposed Public Services Condition 6 (Conditions GEN-PS-02), requiring that the
25 certificate holder prepare and implement a Fire Prevention and Suppression Plan; and Fish and
26 Wildlife Condition 2 (Condition GEN-FW-02), requiring that the certificate holder prepare and
27 implement a Vegetation Management Plan. The Council found that, subject to compliance with
28 the Fire Prevention and Suppression Plan, the impact minimization measures included in the
29 Right of Way Clearing Assessment, and Vegetation Management Plan, that the proposed use
30 would not significantly increase the wildfire hazards, fire suppression costs, or risk to fire
31 suppression personnel within the surrounding area.⁹⁸

32
33 Fish and Wildlife Condition 2 (Condition GEN-FW-02) requires that the Vegetation Management
34 Plan be finalized in accordance with a formal reviewing agency process, prior to construction,
35 and be implemented during construction and operations. While the plan may need to be
36 amended in the future, the plan is currently final. In addition, the plan includes requirements
37 that apply during O&M and therefore the condition does not need to require that the plan be
38 finalized, prior to construction, or implemented prior to operations. As presented in
39 Attachment 1 of this order, the Department recommends Council amend the condition
40 accordingly.

41

⁹⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 276 of 10586.

⁹⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 279 of 10586.

1 As described above, the facility is not a use authorized under OAR 660-006-0025(5)(c), so
2 UCZPSO 5.06.3 is not applicable to the review of the facility, or the proposed RFA1 site
3 boundary additions.

4
5 The proposed RFA1 site boundary additions are not expected to significantly increase the
6 amount of land taken out of forest use in Union County, and impacts to lands in Union County's
7 A-4 zone would be addressed in the plans required under Land Use Condition 16 (Condition
8 GEN-LU-13); Public Services Condition 6 (Conditions GEN-PS-02); and Fish and Wildlife
9 Condition 2 (Condition GEN-FW-02). Subject to compliance with these conditions, the
10 Department recommends Council find that the proposed RFA1 site boundary additions comply
11 with UCZPSO 5.06.

12
13 UCZPSO 5.08, Development and Fire Siting Standards

14
15 *The following standards shall apply to all development in an A-4 Timber-*
16 *Grazing Zone. Fire siting standards (items 5-8) shall apply only to new*
17 *dwellings and related structures in the A-4 Zone where the predominant use is*
18 *forestry [OAR 660-06-055(3)] and where dwellings are on rangeland within*
19 *one quarter mile of forest land areas.*

20
21 *1. Any proposed division of land included within the A-4 Zone resulting in the*
22 *creation of one or more parcels of land shall be reviewed and approved or*
23 *disapproved by the County (ORS 215.263).*

24
25 *2. Setbacks from property lines or road rights-of-way shall be a minimum of*
26 *20-foot front and rear yards and 10-foot side yards.*

27
28 *3. Animal shelters shall not be located closer than 100 feet to an R-1 or R-2*
29 *Zone.*

30
31 *4. Signs shall be limited to the following:*

32
33 *A. All off-premise signs within view of any State Highway shall be regulated by*
34 *State regulation under ORS Chapter 377 and receive building permit approval.*

35
36 *B. All on premise signs shall meet the Oregon Administrative Rule regulations*
37 *for on premise signs which have the following standards:*

38
39 *(1) Maximum total sign area for one business is 8% of building area plus*
40 *utilized parking area, or 2,000 square feet, whichever is less.*

41
42 *(2) Display area maximum is 825 square feet for each face of any one sign, or*
43 *half the total allowable sign area, whichever is less.*

1 (3) Businesses which have no buildings located on the premises or have
2 buildings and parking area allowing a sign area of less than 250 square feet
3 may erect and maintain on-premises signs with the total allowable area of
4 250 square feet, 125 square feet maximum for any one face of a sign.
5

6 (4) Maximum height of freestanding signs adjacent to interstate highways is
7 65 feet, for all other highways is 35 feet, measured from the highway surface
8 or the premises grade, whichever is higher to the top of the sign
9

10 C. All on premise signs within view or 660 feet of any State Highway shall
11 obtain permit approval from the Permit Unit, Oregon State Highway Division.
12 No sign shall be moving, revolving or flashing, and all lighting shall be directed
13 away from residential use or zones, and shall not be located so as to detract
14 from a motorist's vision except for emergency purposes.
15

16 D. All dwelling addresses shall be uniquely designated in accordance with the
17 Union County Road Naming and Addressing Ordinance (Court Order 1988-03)
18 on signs clearly visible and placed at the intersection of the driveway and
19 named road. Rural address markers provided and installed by the Union
20 County Public Works Department shall not be removed, modified or
21 obstructed.
22

23 E. Signs identifying pertinent information such as "dead end road", "bridge
24 out", and so forth, shall be appropriately placed as designated by Union
25 County.
26

27 F. Signs identifying location of a fire-fighting water source and each assess to
28 that source shall be permanently identified and shall indicate whether it is a
29 fire hydrant, a dry hydrant, or another type of water supply.
30

31 * * * * *

32
33 In the *Final Order on the ASC*, the Council imposed Land Use Condition 7 (Condition GEN-LU-06)
34 requiring that buildings located in Union County's A-4 Zone comply with setback requirements
35 that are consistent with UCZPSO 5.08.2 and signs to comply with the requirements of UCZPSO
36 5.08.4. This condition applies to the proposed RFA1 site boundary additions. Because existing
37 conditions would ensure compliance with its provisions, the Department recommends the
38 Council find the proposed RFA1 site boundary additions would continue to comply with UCZPSO
39 5.08.
40

41 UCZPSO 20.08, Riparian Zone Setbacks

42

43 *In order to maintain vegetative cover along Class I streams, rivers and lakes*
44 *known as riparian habitat a setback for any new development such as*

1 structures or roads shall be required on a sliding scale proportional to one-half
2 the stream width, at right angles to the annual high-water line or mark. A
3 minimum of 25-feet either side of streams will be recognized. Woody
4 vegetation presently existing in the riparian zone shall be maintained,
5 however, thinning or harvesting of merchantable tree species may occur
6 within the riparian zone where 75 percent of the existing shade over the
7 stream is maintained.

8
9 In the *Final Order on the ASC*, the Council imposed Land Use Condition 6 (Condition GEN-LU-
10 06), which requires in relevant part, that the certificate holder locate transmission towers and
11 access road at least 25 feet from Class I streams and retain at least 75 percent of vegetation
12 within the riparian zone of all Class I streams within Union County. This condition applies to the
13 proposed RFA1 site boundary additions.

14
15 Because existing conditions would ensure compliance with its requirement, the Department
16 recommends that the Council find that the proposed RFA1 site boundary additions would
17 comply with UCDC 152.016.

18
19 UCZPSO 20.09, Significant Goal 5 Resource Areas

20
21 *1. Any land use action requiring County zoning or partitioning approval or any*
22 *activity listed as a conflict in this ordinance which is within 1320 feet of or*
23 *could have an impact on:*

24
25 *A. Significant historical sites or structures,*

26
27 *B. Significant scientific or natural areas,*

28
29 *C. Significant aggregate resource sites,*

30
31 *D. Big game critical wildlife habitat area and big game winter range*

32
33 *E. Significant avian habitat*

34
35 *F. Significant wetlands, and*

36
37 *G. Designated Scenic Waterways identified by the Union County Land Use*
38 *Plan, shall be reviewed by the Planning Director for appropriate public*
39 *notification measures and conflict resolution.*

40
41 *2. Affected Land Management Agencies, landowners and interested persons*
42 *will be notified of the proposed land use action and will be given an*
43 *opportunity to submit testimony per the applicable application procedure*
44 *prior to a decision on the land use action.*

1
2 *3. Review Classifications*

3
4 *A. When a 3A or 3C (limit conflicting uses) decision has been made as*
5 *indicated in the comprehensive plan, the applicant must, in coordination with*
6 *the responsible agency, develop a management plan which would allow for*
7 *both Article 20.00 Page 6 resource preservation and the proposed use. If the*
8 *responsible agency and the applicant cannot agree on such a management*
9 *plan, the proposed activity will be reviewed through the conditional use*
10 *process. 3A sites will be preserved where potential conflicts may develop.*
11 *Conflicts will be mitigated in favor of the resource on 3C sites.*

12
13 *B. When a 3B (allow conflicting uses) decision has been made as indicated on*
14 *Goal 5 inventory sheets, the request shall not be subject to the standards of*
15 *this Section.*

16
17 *4. Under the conditional use process land use decisions will consider the*
18 *economic, social, environmental, and energy consequences when attempting*
19 *to mitigate conflicts between development and resource preservation.*

20
21 *5. The following criteria shall be considered, as applicable, during the*
22 *appropriate decision making process:*

23
24 *A. ECONOMIC: The use proposed is a benefit to the community and would*
25 *meet a substantial public need or provide for a public good which clearly*
26 *outweighs retention of the resources listed in Section 18.09 (1):*

27
28 *B. SOCIAL: The proposed development would not result in the loss of or cause*
29 *significant adverse impact to, a rare, one of a kind or irreplaceable resource as*
30 *listed in Section 18.09 (1).*

31
32 *C. ENERGY: The development, as proposed, would support energy efficient*
33 *land use activities for such things as transportation costs, efficient utilization*
34 *of urban services, and retention of natural features which create micro*
35 *climates conducive to energy efficiency.*

36
37 *D. ENVIRONMENTAL: If alternative sites in Union County for proposed*
38 *development are available which would create less of an environmental*
39 *impact of any of the resources listed in Section 18.09 (1), major consideration*
40 *should be given to these options.*

41
42 *6. The reviewing body may impose the following conditions, as applicable*
43 *upon a finding of fact that warrants such restrictions:*
44

1 A. *SIGNIFICANT AGGREGATE SITES: Residences and uses listed as conditional*
2 *uses may be required to provide screening, landscaping, and/or setbacks in*
3 *excess of those required in the zone in which the lot or parcel is located. The*
4 *required screening, landscaping, and setback shall be determined by the*
5 *Planning Director after meeting with the applicant and the owner of the*
6 *aggregate resource land to ensure compatibility between present and future*
7 *Article 20.00 Page 7 uses on the properties. Such setback shall be no less than*
8 *50 feet and no greater than 1320 feet.*

9
10 B. *WETLANDS AND NATURAL AREAS: Limitations may be required on draining,*
11 *filling, structural development, and/or removal of vegetation in order to*
12 *protect and preserve existing trees, vegetation, water resources, wildlife*
13 *habitat or other significant natural resources.*

14
15 C. *BIG GAME WINTER RANGE AND BIG GAME CRITICAL HABITAT: A proposed*
16 *new structure requiring a conditional use may be required to:*

17
18 1. *Be located as close as possible to an ADJACENT compatible structure (a*
19 *compatible structure shall be any structure which does not adversely affect*
20 *the intended use of another structure);*

21
22 2. *Share a common access road or where it is impossible to share a common*
23 *access road, locate as closely as possible to the nearest existing public road in*
24 *order to minimize the length of access from the nearest road.*

25
26 D. *AVIAN HABITAT: Any proposed activity permitted outright or conditionally*
27 *may be required to establish a setback from critical nesting or roosting areas*
28 *and to preserve existing trees, vegetation, and water resources.*

29
30 E. *DESIGNATED SCENIC WATERWAYS: The applicant for a proposed use that is*
31 *to be located within the Minam River Scenic Waterway and that is regulated*
32 *under the Oregon Scenic Waterways Rules shall obtain a notice to proceed*
33 *from the State Highway Commission or the time limit for review by the State*
34 *Highway Commission shall have expired prior to obtaining a zoning or building*
35 *permit from the County.*

36
37 Portions of the proposed RFA1 site boundary additions would be located in Union County's Big
38 Game Winter Range Overlay Zone and are subject to the provisions of UCZPSO 20.09.

39
40 In the *Final Order on the ASC*, the Council found that the facility complies with UCZPSO 20.09, in
41 part because the certificate holder had attempted to utilize existing roads and to limit the
42 development of new roads in critical habitat and winter range overlay areas to the extent

1 possible.⁹⁹ Because the proposed RFA1 site boundary additions do not significantly change the
2 nature of the previously approved facility or significantly increase the amount of roads located
3 in Union County’s Winter Range areas, the Department recommends that the Council continue
4 to rely on its previous findings.

5
6 UCZPSO 21.06, General Standards Governing Conditional Uses

7
8 *The following standards and criteria shall govern conditional uses, except as*
9 *provided in subsection 21.07:*

10
11 *1. A conditional use shall ordinarily comply with the standards of the zone*
12 *concerned for uses permitted outright except as specifically modified by the*
13 *Planning Commission in granting the conditional use.*

14
15 *2. Other uses similar to those enumerated within specified zones except in the*
16 *A-1, A-2, A-3 and A-4 Zones which are consistent with the purposes and intent*
17 *of the applicable zone may be modified by the Planning Commission if the use*
18 *is found:*

19
20 *A. To be compatible with outright or conditional uses of the applicable zone.*

21
22 *B. Not to interfere seriously with established and accepted practices on*
23 *adjacent lands.*

24
25 *C. Not to materially alter the stability of the overall land use pattern of the*
26 *area.*

27
28 *D. That the proposed use can comply with the standards of the zone, and*

29
30 *E. To comply with such other conditions as the Planning Commission or its*
31 *designate considers necessary to carry out the purposes of this ordinance*

32
33 In the *Final Order on the ASC*, the Council found that, subject to compliance with Land Use
34 Condition 7 (Condition GEN-LU-06), the facility would comply with UCZPSO 21.06. Because Land
35 Use Condition 7 (Condition GEN-LU-06) applies to the proposed RFA1 site boundary additions,
36 the Department recommends the Council continue to rely on its previous findings.

37
38 *III.E.1.d Baker County Applicable Substantive Criteria*

39
40 Proposed RFA1 site boundary additions in Baker County include the addition of the True Blue
41 Gulch Transmission Line alternative, the Durban Quarry Transmission Line alternative and
42 additions associated with design changes to 17 miles of access roads.

⁹⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 218 of 10586.

1
2 The True Blue Gulch alternative would reroute an approximately 4.3-mile segment of the
3 transmission line to the west and south of the approved site boundary. The alternative would
4 include the construction of 14 transmission towers and 4 pulling and tensioning sites, as well as
5 substantial improvements to 4.6 miles of existing road and the construction of 3.9 miles of new
6 access roads. The changes associated with the True Blue Gulch alternative are expected to
7 permanently impact 15.1 acres of EFU land. The site boundary additions associated with the
8 True Blue Gulch alternative are located approximately 4 miles southwest of Durkee and one
9 mile south of the Burnt River Canyon in mountainous terrain.

10
11 The Durbin Quarry Alternative would reroute an approximately 1.9-mile segment of the
12 transmission line approximately 800 feet to the northeast of the approved site boundary to
13 avoid impacts to a quarry operated by the Oregon Department of Transportation (ODOT).¹⁰⁰ The
14 alternative would include the construction of 10 new transmission towers and 4 pulling and
15 tensioning sites, as well as the construction of 2.1 miles of new access roads. The changes
16 associated with the Durbin Quarry alternative are expected to permanently impact 4.1 acres of
17 EFU land.

18
19 The proposed access road changes not associated with the two alternatives include substantial
20 improvement to 4.8 miles of existing road and construction of 1.5 miles of new road. The access
21 road changes are located in EFU zoned land.

22
23 In 2014, Baker County Zoning Ordinance 2014-01 repealed and replaced the Baker County
24 Zoning and Subdivision Ordinance of 1984. As a result, the applicable substantive criteria for
25 the review of the proposed RFA1 site boundary additions are new, however, many of the
26 provisions of the new Ordinance are comparable to the previous version. The applicable
27 substantive criteria within Baker County is presented in Table 13 below.

28
29 Some of the proposed RFA1 site boundary additions are located in Baker County’s Big Game
30 Overlay Zone.

31
32 No proposed site boundary additions are within Baker County’s Rural Service Area Zone or
33 Floodplain Development Zone, so compliance with substantive criteria applicable to those
34 zones are not evaluated in this order.¹⁰¹

Table 13: Baker County Applicable Substantive Criteria

Section	Description
Baker County Zoning Ordinance (BCZO)	
Chapter 340	Development Standards

¹⁰⁰ B2HAMD1 RFA1 2023-06-08. Table 4.1-1.

¹⁰¹ In RFA1 Table 7.1-8, the certificate holder identifies Section 305 requirements within Rural Service Area zone as applicable because portions of the proposed RFA1 site boundary additions occur within 0.5 miles, however no proposed site boundary additions are located within this zone and therefore BCZO Section 305 criteria are not included in the table of applicable substantive criteria.

Table 13: Baker County Applicable Substantive Criteria

Section	Description
Section 340.02	Setbacks and Frontage Requirements
Chapter 410	Exclusive Farm Use Zone
Section 410.03	Uses Permitted Through a Type II Procedure
Chapter 620	Big Game Habitat Overlay Zone
Section 620.03	Permitted Uses
Chapter 710	Historic/Cultural and Natural Area Protection Procedure
Baker County Comprehensive Plan	
Goal V	Open Spaces and Scenic Areas Natural Areas Historic and Cultural Sites, Structures, Districts

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BCZO 340.02, Setbacks and Frontage Requirements

A. Applicability. These requirements shall apply to all structures except for adjustments permitted in Section 340.03 and Livestock Concentration Limitations in Section 510.05.

B. Standards.

** * **

2. No part of a structure shall be constructed or maintained closer than 60 feet to the centerline of a road or street, or 30 feet from any right-of-way in excess of 60 feet.

3. No part of a building or other structure, except for a sign, shall be constructed or maintained closer than 10 feet to any property line.

4. If any part of a structure and/or development is proposed within a jurisdictional wetland, as described in Section 660.03, notification shall be provided by the Baker County Planning Department to the Department of State Lands, as required by ORS 196.795-990. The applicant/property owner shall be responsible for obtaining all necessary permits for the proposed structure and/or development from the Department of State Lands.

In the 1984 BCZO, the setback and frontage requirements applicable to buildings and structures in Baker County were located at BCZSO Section 401. In the updated 2014 BCZO, these provisions have been moved to BCZO 340.02.

1 In the *Final Order on the ASC*, the Council imposed Land Use Condition 10 (Condition CON-LU-
2 01) requiring that the certificate holder comply with the setback requirements specified in
3 BCZO 340.02.B.2 and B.3. This condition applies to the proposed RFA1 site boundary additions.
4

5 As described in Section III.R.2 Water Rights of this order, portions of the proposed RFA1 site
6 boundary additions in Baker County would cross jurisdictional wetlands. The Council previously
7 imposed Removal-Fill Condition 2 and Removal-Fill Condition 6 (Conditions GEN-RF-01 to GEN-
8 RF-04) requiring compliance with ORS chapter 196. These conditions apply to the proposed
9 RFA1 site boundary additions.

10
11 BCZO 410.03, Uses Permitted Through a Type II Procedure

12
13 *In the EFU Zone, the following uses and their accessory uses may be permitted*
14 *when authorized in accordance with the provisions of Section 115.06.*

15
16 * * * * *

17
18 *E. Utility Facilities*

19
20 * * * * *

21
22 *2. Utility facilities necessary for public service, including associated*
23 *transmission lines as defined in ORS 469.300 and wetland waste treatment*
24 *systems, but not including commercial facilities for the purpose of generating*
25 *electrical power for public use by sale or transmission towers over 200 feet*
26 *high. To demonstrate that a utility facility is necessary, as described in ORS*
27 *215.283(1)(c), an applicant must:*

28
29 *a. Show that reasonable alternatives have been considered and that the*
30 *facility must be sited in an Exclusive Farm Use Zone due to one or more of the*
31 *following factors:*

32
33 *i. Technical and engineering feasibility;*

34
35 *ii. The proposed facility is locationally-dependent. A utility facility is*
36 *locationally-dependent if it must cross land in one or more areas zoned for*
37 *exclusive farm use in order to achieve a reasonably direct route or to meet*
38 *unique geographical needs that cannot be satisfied on other lands;*

39
40 *iii. Lack of available urban and non-resource lands;*

41
42 *iv. Availability of existing rights-of-way;*

43
44 *v. Public health and safety;*

1
2 *vi. Other requirements of state and federal agencies*

3
4 *b. Costs associated with any of the factors listed in Section 410.03(D)(1)(a)*
5 *may be considered; however, cost alone may not be the only consideration in*
6 *determining that a utility facility is necessary for public service. Land costs*
7 *shall not be included when considering alternative locations for substantially*
8 *similar utility facilities. The Land Conservation and Development Commission*
9 *shall determine by rule how land costs may be considered when evaluating the*
10 *siting of utility facilities that are not substantially similar.*

11
12 *c. The owner of a utility facility approved under this Section shall be*
13 *responsible for restoring, as nearly as possible, to its former condition any*
14 *agricultural land and associated improvements that are damaged or*
15 *otherwise disturbed by the siting, maintenance, repair or reconstruction of the*
16 *facility. Nothing in this Section shall prevent the owner of the utility facility*
17 *from requiring a bond or other security from a contractor or otherwise*
18 *imposing on a contractor the responsibility for restoration.*

19
20 *d. The governing body of the county or its designee shall impose clear and*
21 *objective conditions to mitigate and minimize the impacts of the proposed*
22 *facility, if any, on surrounding lands devoted to farm use in order to prevent a*
23 *significant change in accepted farm practices or a significant increase in the*
24 *cost of farm practices on the surrounding farmlands.*

25
26 * * * * *

27
28 In the 1984 BCZO, the uses permitted in Baker County’s EFU zone were set forth in BCZSO
29 301.02. In the updated 2014 BCZO, these provisions have been replaced with BCZO 401.3.

30
31 The former BCZO 301.02 provided that “major utility facilities” were permitted in Baker
32 County’s EFU zone. In the *Final Order on the ASC*, the Council found that the facility
33 components located in Baker County’s EFU zone were to be evaluated as a major utility facility,
34 subject to the requirements of ORS 215.275 and 215.283. The Council also found that minimum
35 parcel size and setback requirements found in the previous Ordinance that went beyond the
36 requirements of ORS 215.275 were not applicable to the facility.¹⁰²

37
38 BCZO 401.03 provides that a utility facility necessary for public service, excluding a commercial
39 power generation facility or a transmission tower over 200 feet in height, is a use permitted by
40 right in Baker County’s EFU zone and provides the criteria for whether a utility facility is
41 necessary for public service. These criteria mirror the underlying provisions of ORS 215.275 and
42 215.283. In the *Final Order on the ASC*, the Council determined that the transmission line

¹⁰² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 216.

1 qualifies as a utility facility necessary for public service under ORS 215.275 because there was
2 no reasonably direct route that would allow the applicant to construct the transmission line
3 while avoiding all impacts to EFU zoned land, that the applicant had demonstrated a “lack of
4 available nonresource lands” for which to site the proposed facility; and that the applicant had
5 proposed the route to utilize some available rights-of-ways.¹⁰³ The Council also determined that
6 access roads and other ancillary facilities located in Baker County’s EFU zone were to be
7 evaluated as accessory uses to the transmission line.¹⁰⁴

8
9 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 52 acres
10 of temporary and permanent impacts to agricultural lands in Baker County.¹⁰⁵ Proposed RFA1
11 site boundary additions would result in 120 acres of temporary and permanent impacts to
12 agricultural lands, and would not be additive to the previously evaluated impacts for the facility.
13 The proposed RFA1 site boundary additions would increase but not significantly, the nature or
14 extent of the use. Accordingly, the Department recommends that the Council continue to rely
15 on its previous findings that the proposed RFA1 site boundary additions located in Baker
16 County’s EFU zone continue to qualify as utility facilities necessary for public service.

17
18 BCZO 401.03.E.2.d requires the County, or in this case, the Council, to impose clear and
19 objective conditions to mitigate and minimize the impacts of the proposed facility on
20 surrounding lands devoted to farm use in order to prevent a significant change in
21 accepted farm practices or a significant increase in the cost of farm practices on
22 surrounding farmlands.

23
24 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11), which requires
25 the certificate holder to prepare and implement an Agricultural Assessment and Mitigation Plan
26 prescribing monitoring and mitigation of impacts to soils and activities. This condition would
27 apply to the proposed RFA1 site boundary additions.

28
29 Because the Council previously determined that the facility is a permitted use in Baker County’s
30 EFU zone, and because the Council previously imposed conditions ensuring compliance with the
31 applicable use standards that would also apply to the proposed RFA1 site boundary additions,
32 the Department recommends Council find that the proposed RFA1 site boundary additions
33 would comply with BCZO Section 401.03.

34
35 BCZO 620.03, Big Game Habitat Overlay Zone, Permitted Uses
36

¹⁰³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pgs. 255-256 of 10586.

¹⁰⁴ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 223 of 10586, citing, *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

¹⁰⁵ B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.8.5.4 Table K-29, p. K-309.

1 A. Permitted uses. Uses permitted outright and conditionally in the underlying
2 zoning district shall be permitted in the Big Game Habitat Overlay Zone if they
3 will not result in the degradation of critical big game habitat.

4
5 * * * * *

6
7 In the *Final Order on the ASC*, the Council did not identify any ordinance establishing
8 requirements for uses located in Baker County’s Big Game Habitat Overlay Zone and found that
9 the Baker County Comprehensive Plan did not include provisions for the protection of Big Game
10 Habitat applicable to the facility except for setback requirements to minimize impacts on
11 riparian vegetation. The Council found that, subject to compliance with those requirements, the
12 facility would be consistent with the county’s Goal 5 planning goals for protecting big game
13 habitat.¹⁰⁶

14
15 In the updated Baker County Zoning Ordinance of 2014, the County adopted BCZO 620.03,
16 which as shown above, allows uses to be permitted in the Big Game Habitat Overlay Zone if the
17 use will not result in the degradation of critical big game habitat.

18
19 Both the True Blue Gulch and Durbin Quarry alternatives, as well as several site boundary
20 additions associated with access road changes, would be located in Baker County’s Big Game
21 Habitat Overlay Zone.¹⁰⁷ As described in more detail in Section III.H, the Council’s Fish and
22 Wildlife Habitat standard (OAR 345-022-0060) requires findings that the design, construction
23 and operation of the facility, taking into account mitigation, are consistent with the general fish
24 and wildlife habitat mitigation goals and standards established under OAR 635-415-0025.

25
26 In the *Final Order on the ASC*, the Council evaluated all ODFW-identified elk and mule deer
27 winter range as Category 2 Habitat¹⁰⁸, and required mitigation of impacts to ensure that there is
28 no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity
29 or quality. The Council imposed Fish and Wildlife Condition 4 (Condition GEN-FW-04) requiring
30 that the certificate holder provide adequate mitigation for impacts to habitat quantity and
31 quality through mitigation banking, an in-lieu fee program, or permittee-developed mitigation
32 projects. The Council also imposed Fish and Wildlife Condition 11 (Condition CON-FW-01)
33 prohibiting the certificate holder from conducting ground-disturbing activities within elk or
34 mule deer winter range between December and March without prior approval. These
35 conditions apply to the proposed RFA1 site boundary additions.

36
37 Because existing conditions would ensure that any impacts to habitat within proposed RFA1
38 site boundary additions would be mitigated based on a mitigation goal of no net loss of either
39 the quantity or quality of big game winter range, the Department recommends the Council find

¹⁰⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 232 of 10586.

¹⁰⁷ B2HAMD1 RFA1 2023-06-08. Section 7.1.5.3.

¹⁰⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 350 of 10586.

1 that the proposed RFA1 site boundary additions within big game winter range would comply
2 with BCZO 620.03.

3
4 BCZO 710, Historic/Cultural and Natural Area Protection Procedure

5
6 710.03 Permits Required

7
8 *A. A permit shall be required to destroy or make major alteration to a*
9 *historic/cultural/natural site or structure inventoried as significant in the*
10 *County Comprehensive Plan. Upon receipt of an application for said permit,*
11 *the Planning Department shall institute a 30-day hold. During that time*
12 *various actions will be initiated by the County depending upon the nature of*
13 *the threatened resource. All of the inventoried natural sites, historic sites and*
14 *the cultural sites identified with one, two or three stars will be subject to a*
15 *public hearing. Notice of the proposed change and public hearing will be*
16 *provided to the general public, the State Historic Preservation Office, the State*
17 *Natural Heritage Advisory Council, the State Department of Fish and Wildlife*
18 *and/or affected local historical, cultural, or governmental entities. The*
19 *opportunity to educate, persuade, pay for, and/or require the preservation of*
20 *a significant resource will be provided by the County. At the hearing before the*
21 *Planning Commission a review will be conducted to determine:*

22
23 *1. If the change will destroy the integrity of the resource.*

24
25 *2. If the proposal can be modified to eliminate its destructive aspects.*

26
27 *3. If any agency or individual is willing to compensate the resource owner for*
28 *the protection of the resource.*

29
30 *4. If the resource can be moved to another location.*

31
32 *B. If, after this review, it is determined by the County that the integrity of a*
33 *significant historic/cultural structure or townsite or a natural area resource is*
34 *threatened, the following criteria will be applied to decide whether to allow,*
35 *allow with conditions, or disallow the proposed change:*

36
37 *1. For significant historic/cultural structures and townsites.*

38
39 *a. The historic/cultural structure or townsite constitutes a hazard to the safety*
40 *of the public occupants and cannot reasonably be repaired; or*

41
42 *b. The retention of the historic/cultural structure or townsite would cause*
43 *financial hardship to the owner which is not offset by public interest in the*
44 *structure's/townsite's preservation; or*

1
2 *c. The improvement project is of substantial benefit to the County and cannot*
3 *be reasonably located elsewhere, and overrides the public's interest in the*
4 *preservation of the historic/cultural structure or townsite; or*

5
6 *d. Major exterior alteration shall, to the extent possible, be consistent with the*
7 *historic/cultural character of the structure.*

8
9 *2. For significant natural areas.*

10
11 *a. The Existence of a Site Report. The site's relative significance is indicated by*
12 *the existence of a site report indicating a field survey with one or more*
13 *elements verified.*

14
15 *b. Number of Elements. The site is elevated to a higher priority if it contains a*
16 *diversity of natural elements.*

17
18 *c. Past Use of Land. The degree to which human activities have already*
19 *impacted an area is a significant factor in determining the value of protecting*
20 *the resource.*

21
22 *d. Abundance and Quality of the Same Resource Elsewhere on the County's*
23 *Inventory. In reviewing such comparative information, the County will be able*
24 *to make its decision knowing the relative significance of the resource in*
25 *question.*

26
27 *e. Financial Impact. A determination that the retention of the natural area*
28 *would cause financial hardship to the owner not offset by public interest in the*
29 *site's preservation would be a determining factor in the County's decision.*

30
31 *f. Public Benefit from the Proposed Change. A finding that the change is of*
32 *substantial benefit to the County and cannot be accommodated feasibly*
33 *elsewhere on the applicant's property would be a significant factor in the*
34 *County's decision.*

35
36 *3. For Resources on Federally Managed Lands. The findings and conclusions of*
37 *Baker County relative to a proposed alteration or demolition of a significant*
38 *cultural/ historic/natural site/structure shall be forwarded to the appropriate*
39 *federal agency as a recommendation.*

40
41 *4. For Resources Not Inventoried or Designated as 1B. For resources of*
42 *unknown significance or resources not on the inventory, a local review will be*
43 *conducted by BLM and USFS personnel, Oregon Department of Fish and*
44 *Wildlife, State and/or college historians, and local museum and historical*

1 *society members to evaluate the resource's comparative worth and make a*
2 *recommendation as to whether a full public hearing is warranted.*

3
4 In the 1984 BCZO, the procedures for the protection of historic or cultural structures and sites
5 and natural area were located at BCZSO Section 412. In the updated 2014 BCZO, these
6 provisions have been moved to BCZO 710.02. While there have been a number of
7 administrative changes, the procedures and requirements are generally comparable to the
8 previous Ordinance.

9
10 In the *Final Order on the ASC*, the Council found that the construction and operation of the
11 approved facility would not result in significant impacts to significant historic or cultural
12 structures or townsites or significant natural areas included in Baker County's inventory of
13 Historic and Cultural Sites, Structures, Districts contained within the Baker County
14 Comprehensive Plan Goal 5 Supplement and was therefore consistent with BCZSO Section 412.

15
16 The proposed RFA1 site boundary additions in Baker County are located more than 0.5 miles
17 from any of the inventoried Goal 5 resources, and as such the Department recommends Council
18 find that the proposed RFA1 site boundary additions would not impact the certificate holder's
19 ability to comply with BCZO 710.03.B.1 to B.3.

20
21 *III.E.1.e Malheur County Applicable Substantive Criteria*

22
23 In the *Final Order on the ASC*, the Council evaluated the facility's compliance with applicable
24 provisions of Malheur County Code (MCC) Title 6, Article A (Resource Zones), Article I (Heavy
25 Industrial Zone), and Article K (Flood Plain Management Zone).

26
27 The proposed RFA1 site boundary additions located in Malheur County are associated with
28 design changes to 7.4 miles of access roads, including substantial improvements to 3.4 miles of
29 existing road and the construction of 4 miles of new access roads, and would permanently
30 impact approximately 12.4 acres. The proposed RFA1 site boundary additions are all located
31 within Malheur County's EFU (C-A1) and Exclusive Range Use (C-A2); and Heavy Industrial (HI)
32 zones. The applicable substantive criteria within these zones is presented in Table 14 below.

33
34 Malheur County has amended the Malheur County Code since the application was submitted in
35 2013. Based on the date that preliminary RFA1 was submitted, the version of the Malheur
36 County Code that took effect on August 10, 2022 applies to the review of the proposed RFA1
37 site boundary additions. The Malheur County Comprehensive Plan has not been updated since
38 2010.

Table 14: Malheur County Applicable Substantive Criteria

Section	Description
Malheur County Code, Title 6: Zoning	
Article A	Resource Lands
Section 6-3A-2	Permitted Uses

Table 14: Malheur County Applicable Substantive Criteria

Section	Description
Article I	M-2 Heavy Industrial Zone
Section 6-3I-3	Conditional Uses
Section 6-3I-4	Performance Standards
Article K	Flood Plain Management Overlay
Section 6-3K-3	Standards
Malheur County Comprehensive Plan	
Goal 3 Agricultural Lands	Policy 2 Policy 7 Policy 8 Policy 9

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MCC 6-3A-2, Permitted Uses

A. The following uses may be permitted outright by ministerial permit in each of the three (3) resource zones except as specifically added or excluded:

** * * * **

*14. Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over two hundred feet (200') in height. A utility facility necessary for public service may be established as provided in ORS 215.275 and section 6-6-8-8, "Wireless Telecommunication Facilities" of this title.
(Ord. 86, 12-7-1993; amd. Ord. 146, 4-14-2004)*

MCC 6-3A-2 provides that a utility facility necessary for public service, excluding a commercial power generation facility or a transmission tower over 200 feet in height, is a use permitted by right in Malheur County’s three resource zones. The criteria for whether a utility facility is necessary for public service is provided under ORS 215.275. In the *Final Order on the ASC*, the Council determined that the transmission line qualifies as a utility facility necessary for public service under ORS 215.275 because there was no reasonably direct route that would allow the applicant to construct the transmission line while avoiding all impacts to EFU-zoned land, that the applicant had demonstrated a “lack of available nonresource lands” for which to site the proposed facility; and that the applicant had proposed the route to utilize some available

1 rights-of-ways.¹⁰⁹ The Council also determined that access roads located on the same lots as the
2 transmission line were to be evaluated as accessory uses to the transmission line.¹¹⁰

3
4 All proposed site boundary additions associated with access road changes in Malheur County
5 are located on tax lots that contain portions of the approved transmission line route.¹¹¹

6
7 The Council also imposed Land Use Condition 11 (Condition GEN-LU-08), requiring, in part, that
8 the certificate holder obtain all necessary permits from Malheur County prior to facility
9 construction.

10
11 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 74 acres
12 of temporary and permanent impacts to agricultural lands in Malheur County.¹¹² Proposed RFA1
13 site boundary additions would result in approximately 25 acres of temporary and permanent
14 impacts to agricultural lands, and would not be additive to the previously evaluated impacts for
15 the facility. The proposed RFA1 site boundary additions do not significantly change the nature
16 or extent of the use. Accordingly, the Department recommends that the Council continue to
17 rely on its previous findings that the portion of the facility, including related or supporting
18 facilities, located in Malheur County’s resource zones, continue to qualify as utility facilities
19 necessary for public service.

20
21 Because the Council previously determined that the facility is a permitted use in Malheur
22 County’s resource zones, and because the Council previously imposed conditions ensuring
23 compliance with the applicable use standards that would also apply to the proposed RFA1 site
24 boundary additions, the Department recommends that Council find that the proposed RFA1 site
25 boundary additions would comply with MCC 6-3A-2.

26
27 MCC 6-3I-3, Conditional Uses

28
29 *The following uses and their accessory uses may be established when*
30 *authorized in accordance with Chapter 6 of this Title:*

31
32 *A. All conditional and permitted uses allowed in an M-1 Zone that are*
33 *compatible with a heavy industrial zone.*

34
35 * * * * *

36

¹⁰⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 255-256 of 10586.

¹¹⁰ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 237-238 of 10586, citing, *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

¹¹¹ B2HAMD1 RFA1 Figure 8-1 Property Owner Map 2023-06-08. Maps 14-21 demonstrate that all proposed RFA1 site boundary additions would intersect with the alignment of the approved transmission line route.

¹¹² B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.10.5.4 Table K-36, p. K-339

1 Utility Facilities, including ancillary facilities, are identified as a conditional use allowed in an M-
2 1 zone under MCC 6-3H-3(I), and are, by operation of MCC 3-3I-3(A), allowed as a conditional
3 use in Malheur County’s M-2 (Heavy Industrial) Zone. The Department therefore recommends
4 Council find that the proposed modification and use of an existing road is compatible with the
5 zone.

6
7 MCC 6-3I-4, Performance Standards
8

9 *Each structure or use permitted or conditionally permitted in the M-2 Zone*
10 *shall meet the following performance standards:*

11
12 *A. Conduct Of Use: No permitted or permissible use shall be conducted in any*
13 *manner which would render it noxious or offensive by reason of dust, refuse*
14 *matter, odor, smoke, gas fumes, noise, vibration or glare.*

15
16 *B. Enclosure: All manufacturing or processing activities shall be completely*
17 *enclosed in buildings, except as provided by the conditional use section of this*
18 *Article*

19 .
20 *C. Outdoor Storage: Junk, salvage, auto wrecking and similar operations shall*
21 *be fenced, screened or limited in height so as to block substantially any view*
22 *of such material from any point located on an abutting street or from any*
23 *point less than eight feet (8') above grade within any abutting residential or*
24 *commercial zone. However, this subsection C shall not be deemed to require*
25 *more than an opaque fence or screen not more than ten feet (10') in height*
26 *and not longer than the full perimeter of the subject zoning lot, and further*
27 *provided, such screening may be reduced in height so as to avoid shading a*
28 *solar collector on adjoining property when so requested by the adjoining*
29 *property owner or a government official. No outdoor storage of materials*
30 *which could be blown into the air or strewn about by wind shall be permitted.*

31 *D. Loading: Truck loading and unloading operations shall take place entirely*
32 *within the site and shall not be so located as to interfere with pedestrian*
33 *routes.*

34
35 *E. Fire Hazard: No operation shall be established which constitutes a fire*
36 *hazard.*

37
38 *F. Noise: Noise shall be muffled as available technology permits so as to not be*
39 *objectionable due to intermittence, beat frequency or shrillness and shall meet*
40 *any State standards.*

41
42 *G. Sewage And Liquid Waste: All operations shall comply with any applicable*
43 *regulations of the County, State or Federal agencies responsible for pollution*
44 *control. No wastes of a chemical, organic or radioactive nature shall be*

1 *injected or buried in the ground or stored in the open on the surface except in*
2 *approved containers.*

3
4 *H. Odor: The emission odors that are generally agreed to be obnoxious to any*
5 *considerable number of people shall be abated with the latest feasible*
6 *technology. As a general guide to classification of odor, it is deemed that*
7 *odors of putrefaction, hydrogen sulfide, fermentation and rendering processes*
8 *are objectionable while odors associated with baking, coffee roasting or nut*
9 *roasting are normally not considered obnoxious. To reduce odors, the open air*
10 *cooling of products with aromatic emissions shall be avoided. Floors,*
11 *machinery, storage containers and other surfaces shall be kept clean of*
12 *material which is potentially odor causing.*

13
14 *I. Vibration: All machines shall be mounted so as to minimize vibration.*
15 *Vibration shall not be so excessive as to interfere with heavy industrial*
16 *operations on nearby premises.*

17
18 *J. Glare And Heat: Any glare producing operations, such as welding arcs, shall*
19 *be shielded so that they are not visible from the property line and surfaces*
20 *near the glare source shall be of a type which will minimize the reflection of*
21 *such glare beyond the property line. No heat from equipment or furnaces shall*
22 *raise the temperature of materials or ambient air at the property line more*
23 *than three degrees Fahrenheit (3°F).*

24
25 *K. Interpretation: Whenever it cannot be decided by reasonable observation*
26 *that a performance standard is being met, it shall be the responsibility of the*
27 *operator of the use to supply evidence or engineering data to support the*
28 *contention that a standard is being met. The standards are designed, except*
29 *where referring to other codes, to be judged by ordinary human senses and*
30 *not by the minute detail of scientific quality instruments. Until such evidence*
31 *or engineering data is supplied and proves to be convincing, the judgment of*
32 *the Planning Director shall be the determining factor. (Ord. 86, 12-7-1993)*

33
34 Proposed RFA1 site boundary additions that would be located in Malheur County's M-2 zone
35 include substantial modifications to existing roads, to be used for access during construction
36 and operation. Construction and use of substantially modified roads could generate dust,
37 refuse, smoke, fumes, noise and vibrations consistent with other allowable uses within the M-2
38 zone, such as concrete plants, trucking freight terminals, and service stations. However, the
39 noise, waste, odor, vibrations, and glare is not expected to be excessive or interfere with
40 nearby operations.

41
42 Council previously imposed Land Use Condition 11 (Condition GEN-LU-08) requiring that the
43 certificate holder obtain zoning permits prior to any development in the M-2 zone. Because the
44 use that would occur within the M-2 zone is consistent with allowable uses and based on

1 compliance with the previously imposed condition, the Department recommends Council find
2 that the proposed RFA1 site boundary additions in Malheur County’s M-2 zone would comply
3 with MCC 6-3I-4 Performance Standards.

4
5 MCC 6-3K-3, Standards
6

7 *The following standards shall be applicable to any area designated as being*
8 *within the 100-year flood plain:*
9

10 *A. Any development shall comply with Title 5, Chapter 2 of this Code and the*
11 *Federal Insurance Administration requirements for minimizing flood hazards.*
12

13 *B. Any development shall also comply with the standards of the underlying*
14 *primary zone.*
15

16 *C. If a conflict in regulations or procedures occurs, the more restrictive*
17 *provisions shall govern. (Ord. 86, 12-7-1993)*
18

19 MCC 6-3K-3 establishes flood hazard minimization standards for development within SFHA’s,
20 including compliance with primary underlying zone development standards and MCC Title 5,
21 Chapter 2 and the Federal Insurance Administration. MCC Title 5, Chapter 2, requires among
22 other things, that a development permit be obtained prior to any construction or development
23 in a flood zone:
24

25 *5-2-4-1: ESTABLISHMENT OF DEVELOPMENT PERMIT:*

26 *A development permit shall be obtained before construction or development*
27 *begins within any area horizontally within the special flood hazard area*
28 *established in subsection 5-2-3 B of this chapter. The development permit shall*
29 *be required for all structures, including manufactured dwellings, and for all*
30 *development as defined in 5-2-2 , including fill and other activities. Application*
31 *for a development permit shall be made on forms furnished by the Malheur*
32 *County planning director/floodplain administrator and may include, but not be*
33 *limited to, plans in duplicate drawn to scale showing the nature, location,*
34 *dimensions and elevations of the area in question; existing or proposed*
35 *structures, fill, storage of materials, drainage of facilities and the location of*
36 *the foregoing.*
37

38 *Specifically, the following information is required:*

39 *A. In riverine flood zones, the proposed elevation (in relation to mean sea*
40 *level), of the lowest floor (including basement) and all attendant utilities of*
41 *all new and substantially improved structures.*

42 *B. Proposed elevation in relation to mean sea level to which any non-*
43 *residential structure will be flood proofed.*

- 1 C. *Certification by a registered professional engineer or architect licensed in*
2 *the State of Oregon that the floodproofing methods for any non-*
3 *residential structure meet the floodproofing criteria in subsection 5-2-5-2 C*
4 *of this chapter.*
5 D. *Description of the extent to which any watercourse will be altered or*
6 *relocated as a result of proposed development.*
7 E. *Base flood elevation data for subdivision proposals or other development*
8 *when required per sections 5-2-4-2 B and 5-2-5-1 F.*
9 F. *Substantial improvement calculations for any improvement, addition,*
10 *reconstruction, renovation, or rehabilitation of an existing structure.*
11 G. *The amount and location of any fill or excavation activities proposed.*
12 *(Ord. 54, 3-24-1987; amd. Ord. 147, 4-14-2004; Ord. 219, 11-13-2019)*
13

14 The proposed RFA1 site boundary additions include the modification of a segment of existing
15 road (MA-599) that falls partially within the floodplain of the Malheur River.¹¹³ The Council
16 previously imposed Land Use Condition 11 (Condition GEN-LU-08), which requires in part that
17 the certificate holder obtain, from Malheur County, and submit, to the Department, a copy of a
18 Floodplain Development Permit for construction within Malheur County’s Floodplain Overlay
19 Zone. This condition would apply to the portions of proposed RFA1 site boundary additions that
20 would overlap with the Floodplain Overlay Zone.

21
22 Based on compliance with Land Use Condition 11 (Condition GEN-LU-08), the Department
23 recommends that the Council find the proposed RFA1 site boundary additions would comply
24 with MCC 6-3K-3.

25
26 Malheur County Comprehensive Plan, Agricultural Lands Policies
27

28 *1. Public and private land classified by the Natural Resources Conservation*
29 *Service (formerly U.S. Department of Agriculture Soil Conservation Service) as*
30 *being in Capability Classes I through VI, as well as High Value Farmland as*
31 *defined by applicable Oregon Revised Statutes and Oregon Administrative*
32 *Rules and any other lands determined to be necessary and required for farm*
33 *use, are considered to be agricultural lands.*
34

35 *2. High Value Farmlands (ORS and OAR designated) shall be given the greatest*
36 *protection. Lands classified by the Natural Resources Conservation Service, as*
37 *Capability Classes I through VI shall be afforded the next highest protection*
38 *with Class I having the highest protection and Class VI the least.*
39

40 *3. In addition to the Natural Resources Conservation Service classification*
41 *system, county assessor's records may be considered in evaluating individual*
42 *parcels for the purpose of planning and zoning.*

¹¹³ <http://info.malheurco.org/gis/FEMA/Panels/4101490475B.pdf>

1
2 *4. Urban growth boundaries, exclusive farm use zoning, and farm use tax*
3 *assessment will be the major tools used to protect agricultural lands.*
4

5 *5. The county will support viable water resource projects for additional*
6 *storage, power generation, water quality, conservation and recreation. 6. The*
7 *county will review and consult with the irrigation and drainage districts on*
8 *land use decisions to assure they will not negatively impact the integrity or*
9 *operation of water for irrigation or drainage purposes.*

10
11 *7. In addition to county code and the State of Oregon’s land use laws and*
12 *administrative rules for non-farm dwelling, it is the policy of Malheur County*
13 *that there be no net loss of farmlands listed on High Value Farmlands Soils list*
14 *or soils classified as types I-III by the Natural Resources Conservation Service.*

15
16 *8. Current and future accepted farming and ranching practices and activities*
17 *shall have priority and continue without interference.*
18

19 *9. Any utility transmission line should avoid adverse impacts on any*
20 *agricultural operation in the entire agriculture area. This protection should*
21 *prioritize High Value Farmland and the Natural Resources Conservation*
22 *Service soil classes I through III. The County Court will appoint a citizens*
23 *advisory committee on agriculture to review the agricultural lands element of*
24 *the comprehensive plan on an as needed basis.*
25

26 *11. The county will not discourage the creation of special land use districts so*
27 *that landowners can impose more restrictive land use regulations than those*
28 *imposed by the county.*
29

30 In the *Final Order on the ASC*, the Council found that the certificate holder had avoided High
31 Value Farmland soils and NRCS soil classes I through III to the extent possible in the design of
32 the approved route. The proposed RFA1 site boundary additions in Malheur County’s EFU zone
33 would accommodate access route changes in proximity to the approved route.
34

35 The majority of the proposed RFA1 site boundary additions in Malheur County are not located
36 on High-Value or Class I to III soils, however, one proposed new road, designated as segment
37 MA-639, would impact approximately 7.9 acres of high value farmland soils.¹¹⁴ The proposed
38 new route would be located between two fields, following existing disturbance and would
39 avoid impacts to the agriculture fields to the greatest extent possible by traverse the non-
40 cultivated portion of land between the two fields.
41

¹¹⁴ B2HAMD1 RFA1 2023-06-08. Table 7.1-2.

1 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11), which requires
2 the certificate holder to prepare and implement an Agricultural Assessment and Mitigation Plan
3 prescribing monitoring and mitigation of impacts to soils and activities. This condition would
4 apply to the proposed RFA1 site boundary additions.
5

6 *III.E.1.f Directly Applicable State Rules and Statutes*
7

8 ORS 215.275 and 215.283, Utility Facilities Necessary for Public Service
9

10 *ORS 215.275*
11

12 *(1) A utility facility established under ORS 215.213 (1)(c)(A) or 215.283*
13 *(1)(c)(A) is necessary for public service if the facility must be sited in an*
14 *exclusive farm use zone in order to provide the service.*
15

16 *(2) To demonstrate that a utility facility is necessary, an applicant for approval*
17 *under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) must show that reasonable*
18 *alternatives have been considered and that the facility must be sited in an*
19 *exclusive farm use zone due to one or more of the following factors:*
20

21 *(a) Technical and engineering feasibility;*
22

23 *(b) The proposed facility is locationally dependent. A utility facility is*
24 *locationally dependent if it must cross land in one or more areas zoned for*
25 *exclusive farm use in order to achieve a reasonably direct route or to meet*
26 *unique geographical needs that cannot be satisfied on other lands;*
27

28 *(c) Lack of available urban and nonresource lands;*
29

30 *(d) Availability of existing rights of way;*
31

32 *(e) Public health and safety; and*
33

34 *(f) Other requirements of state or federal agencies.*
35

36 *(3) Costs associated with any of the factors listed in subsection (2) of this*
37 *section may be considered, but cost alone may not be the only consideration*
38 *in determining that a utility facility is necessary for public service. Land costs*
39 *shall not be included when considering alternative locations for substantially*
40 *similar utility facilities. The Land Conservation and Development Commission*
41 *shall determine by rule how land costs may be considered when evaluating the*
42 *siting of utility facilities that are not substantially similar.*
43

1 (4) *The owner of a utility facility approved under ORS 215.213 (1)(c)(A) or*
2 *215.283 (1)(c)(A) shall be responsible for restoring, as nearly as possible, to its*
3 *former condition any agricultural land and associated improvements that are*
4 *damaged or otherwise disturbed by the siting, maintenance, repair or*
5 *reconstruction of the facility. Nothing in this section shall prevent the owner of*
6 *the utility facility from requiring a bond or other security from a contractor or*
7 *otherwise imposing on a contractor the responsibility for restoration.*

8
9 (5) *The governing body of the county or its designee shall impose clear and*
10 *objective conditions on an application for utility facility siting under ORS*
11 *215.213 (1)(c)(A) or 215.283 (1)(c)(A) to mitigate and minimize the impacts of*
12 *the proposed facility, if any, on surrounding lands devoted to farm use in order*
13 *to prevent a significant change in accepted farm practices or a significant*
14 *increase in the cost of farm practices on the surrounding farmlands.*

15
16 (6) *The provisions of subsections (2) to (5) of this section do not apply to*
17 *interstate natural gas pipelines and associated facilities authorized by and*
18 *subject to regulation by the Federal Energy Regulatory Commission.*

19
20 *ORS 215.283*

21 (1) *The following uses may be established in any area zoned for exclusive farm*
22 *use:*

23 * * * * *

24
25
26 (c) *Utility facilities necessary for public service, including wetland waste*
27 *treatment systems but not including commercial facilities for the purpose of*
28 *generating electrical power for public use by sale or transmission towers over*
29 *200 feet in height. A utility facility necessary for public service may be*
30 *established as provided in:*

31
32 (A) *ORS 215.275; or*

33
34 (B) *If the utility facility is an associated transmission line, as defined in ORS*
35 *215.274 and 469.300.*

36
37 * * * * *

38
39 In the *Final Order on the ASC*, the Council determined that the transmission line qualifies as a
40 utility facility necessary for public service under ORS 215.275 because there was no reasonably
41 direct route that would allow the applicant to construct the transmission line while avoiding all
42 impacts to EFU zoned land, that the applicant had demonstrated a “lack of available
43 nonresource lands” for which to site the proposed facility; and that the applicant had proposed

1 the route to utilize some available rights-of-ways.¹¹⁵ Consistent with ORS 215.275(5), the
2 Council previously imposed Land Use Condition 14 (Condition GEN-LU-11), which requires the
3 certificate holder to prepare and implement an Agricultural Assessment and Mitigation Plan
4 prescribing monitoring and mitigation of impacts to soils and activities. This condition would
5 apply to the proposed RFA1 site boundary additions.

6
7 The proposed RFA1 site boundary additions do not significantly change the nature or extent of
8 the use. Accordingly, the Department recommends that the Council continue to rely on its
9 previous findings that the portion of the facility, including related or supporting facilities,
10 located in exclusive farm use zones, continue to qualify as a utility facility necessary for public
11 service.

12
13 *III.E.1.g Goal 4 Exception*

14
15 In order to issue an amended site certificate, the Council must find that the facility, with
16 proposed changes, complies with all applicable substantive criteria, Land Conservation and
17 Development Commission administrative rules and goals, and any land use statutes directly
18 applicable to the facility under ORS 197.646(3). If the proposed changes do not comply with
19 one or more applicable substantive criteria, the Council must either find that the facility
20 otherwise complies with the statewide planning goals or that an exception to any relevant goals
21 is justified. Most commonly, an exception is evaluated against the standards in OAR 345-022-
22 0030(4)(c):

23
24 *(4) The Council may find goal compliance for a proposed facility that does not*
25 *otherwise comply with one or more statewide planning goals by taking an*
26 *exception to the applicable goal. Notwithstanding the requirements of ORS*
27 *197.732, the statewide planning goal pertaining to the exception process or*
28 *any rules of the Land Conservation and Development Commission pertaining*
29 *to the exception process, the Council may take an exception to a goal if the*
30 *Council finds:*

31
32 * * *

33
34 *(c) The following standards are met:*

35
36 *(A) Reasons justify why the state policy embodied in the applicable goal*
37 *should not apply;*

38
39 *(B) The significant environmental, economic, social and energy consequences*
40 *anticipated as a result of the proposed facility have been identified and*
41 *adverse impacts will be mitigated in accordance with rules of the Council*
42 *applicable to the siting of the proposed facility; and*

¹¹⁵ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pgs. 255-256 of 10586.

1
2 (C) *The proposed facility is compatible with other adjacent uses or will be*
3 *made compatible through measures designed to reduce adverse impacts.*
4

5 In the *Final Order on the ASC*, the Council found that while the proposed right-of-way of the
6 transmission line would exceed 100 feet, that the facility would still qualify as a conditionally
7 allowed use under OAR 660-006-0025(4)(q) because ORS 772.210(2) specifically authorizes a
8 300-foot right of way for high voltage transmission lines rated to carry more than 330-
9 kilovolts.¹¹⁶ The Council also found that permanent related or supporting facilities, specifically
10 new and substantially modified roads, located outside of the 300-foot right-of-way could not be
11 considered allowed uses under OAR 660-006-0025(4)(q) and would require an exception to
12 Statewide Planning Goal 4 be taken.

13
14 The Council found that there were sufficient reasons to justify an exception to Statewide
15 Planning Goal 4, including that the access roads were necessary for the construction of the
16 facility, that there were no reasonable alternative routes that would result in fewer impacts to
17 Forest Lands, and that the approved access road routes would result in relatively minor impacts
18 on existing forest uses.¹¹⁷ The Council also found that the facility, when considering mitigation,
19 would not cause significant adverse environmental consequences or impacts,¹¹⁸ would
20 represent a net economic benefit,¹¹⁹ and would have no significant adverse impacts on public
21 services or facilities.¹²⁰ The Council also found that the approved access roads would be
22 compatible with adjacent land uses, and that, subject to compliance with conditions of
23 approval, measures would be taken to reduce any potential adverse impacts.¹²¹
24

25 The access road changes, and associated site boundary additions proposed in RFA1 that would
26 be located in Forested Lands in Umatilla and Union counties are expected to permanently
27 impact fewer than 10 acres of forest land. Because the proposed changes do not significantly
28 change the nature or extent of the proposed facility, or its impacts on forest lands, the
29 Department recommends that the Council continue to rely on its previous findings, and find
30 that an exception to Statewide Planning Goal 4 is justified for the proposed RFA1 site boundary
31 located on Umatilla and Union County forest lands.
32

33 **III.E.2. Conclusions of Law**

34
35 Based on the foregoing analysis, and subject to compliance with the existing and recommended
36 amended site certificate conditions described above, the Department recommends the Council

¹¹⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 269 of 10586.

¹¹⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 290 of 10586.

¹¹⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 291 of 10586.

¹¹⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 292 of 10586.

¹²⁰ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 292 of 10586.

¹²¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 293 of 10586.

1 find that the proposed RFA1 site boundary additions complies with the identified applicable
2 substantive criteria and the directly applicable state statutes and rules and, therefore, complies
3 with the Council’s Land Use standard.
4

5 **III.F. PROTECTED AREAS: OAR 345-022-0040**
6

7 *(1) To issue a site certificate, the Council must find:*
8

9 *(a) The proposed facility will not be located within the boundaries of a*
10 *protected area designated on or before the date the application for site*
11 *certificate or request for amendment was determined to be complete under*
12 *OAR 345-015-0190 or 345-027-0363;*
13

14 *(b) The design, construction and operation of the facility, taking into account*
15 *mitigation, are not likely to result in significant adverse impact to a protected*
16 *area designated on or before the date the application for site certificate or*
17 *request for amendment was determined to be complete under OAR 345-015-*
18 *0190 or 345-027-0363.*
19

20 *(2) Notwithstanding section (1)(a), the Council may issue a site certificate for:*

21 *(a) A facility that includes a transmission line, natural gas pipeline, or water*
22 *pipeline located in a protected area, if the Council determines that other*
23 *reasonable alternative routes or sites have been studied and that the*
24 *proposed route or site is likely to result in fewer adverse impacts to resources*
25 *or interests protected by Council standards; or*
26

27 *(b) Surface facilities related to an underground gas storage reservoir that have*
28 *pipelines and injection, withdrawal or monitoring wells and individual*
29 *wellhead equipment and pumps located in a protected area, if the Council*
30 *determines that other alternative routes or sites have been studied and are*
31 *unsuitable.*
32

33 *(3) The provisions of section (1) do not apply to:*
34

35 *(a) A transmission line routed within 500 feet of an existing utility right-of-way*
36 *containing at least one transmission line with a voltage rating of 115 kilovolts*
37 *or higher; or*
38

39 *(b) A natural gas pipeline routed within 500 feet of an existing utility right of*
40 *way containing at least one natural gas pipeline of 8 inches or greater*
41 *diameter that is operated at a pressure of 125 psig.*
42

43 *(4) The Council shall apply the version of this rule adopted under*
44 *Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the*

1 review of any Application for Site Certificate or Request for Amendment that
2 was determined to be complete under OAR 345-015-0190 or 345-027-0363
3 before the effective date of this rule. Nothing in this section waives the
4 obligations of the certificate holder and Council to abide by local ordinances,
5 state law, and other rules of the Council for the construction and operation of
6 energy facilities in effect on the date the site certificate or amended site
7 certificate is executed.¹²²
8

9 III.F.1. Findings of Fact

10
11 The Protected Areas standard first prohibits Council from granting approval of a site certificate
12 if a facility would be located within a designated protected area, unless a proposed facility, or
13 amended facility is a transmission line located within 500 feet of an existing utility right-of-way
14 containing at least one transmission line with a voltage rating of 115 kV or higher; and, if this
15 cannot be met, a demonstration that alternative routes have been studied and determined to
16 result in greater impacts. For facilities, or amended facilities located outside protected areas,
17 including transmission lines, the Protected Areas standard requires the Council to find that,
18 taking into account mitigation, the design, construction and operation of a proposed facility are
19 not likely to result in significant adverse impacts¹²³ from noise, increased traffic, water use,
20 wastewater disposal, visual impacts of facility structures or plumes, and visual impacts from air
21 emissions to any protected area under OAR 345-022-0040 as defined in OAR 345-001-0010(26).
22 As designated in the second amended project order, the analysis area for protected areas is the
23 area within and 20 miles from the site boundary.
24

25 *III.F.1.a Protected Areas in Analysis Area*

26
27 To identify protected areas impacted by the site boundary additions proposed in RFA1, the
28 certificate holder reviewed geographic information system (GIS) data, maps, and other
29 information on the updated categories of protected area as listed in OAR 345-001-0010(26).¹²⁴
30

31 Table 15: *Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary*
32 *Additions*, below, includes the list of protected areas evaluated in the *Final Order on ASC*, new
33 potentially impacted protected areas designated from the 2022 protected areas rulemaking, as

¹²² OAR 345-022-0040, effective December 19, 2022.

¹²³ OAR 345-001-0010(29) defines “Significant” as “...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.”

¹²⁴ The Council’s protected area rulemaking, which updated the list of protected areas, the effective dates, and land management agency contact information, became effective on December 19, 2022. Council’s approval of the Boardman to Hemingway Transmission Line Final Order on ASC was September 27, 2022, therefore the previous protected area rule language applied to Council’s approval of the ASC.

1 well as the proximity of approved and proposed RFA1 site boundary additions to each
2 protected area. The *Final Order on ASC* identified 80 protected areas. RFA1 identifies 8
3 additional protected areas, described below, that are within the 20-mile proposed RFA1 site
4 boundary additions analysis area.

5
6 *Description of Newly Identified Protected Areas in RFA1 Analysis Area*¹²⁵

7
8 Glass Hill Preserve/ State Natural Area (SNA); Oregon Natural Areas Plan/Glass Hill; Union
9 County, Oregon:

10
11 The Glass Hill Preserve/SNHA consists of approximately 1,230 acres located southwest of
12 the City of La Grande in Union County, Oregon.¹²⁶ The Preserve/SNHA is located in the Blue
13 Mountains ecoregion and is dominated by a peak that is 5,390 feet in elevation. The
14 Preserve/SNHA was established in 2020 and is part of a privately owned nature
15 reserve/conservation easement managed by the Blue Mountain Land Trust. Conservation
16 easement may allow public hunting and fishing by permission. ~~The public is likely excluded~~
17 ~~from this area~~ Open public access to the area is unclear.¹²⁷

18
19 The Boardman Research Natural Area (RNA); Oregon Natural Areas Plan; Morrow County,
20 Oregon:

21
22 The Boardman RNA is part of the Umatilla Plateau in the central Columbia River Basin,
23 located south of Boardman, Oregon in Morrow County. The RNA consists of approximately
24 5,654 acres and was established September 1, 1978, to preserve examples of Columbia
25 River basin steppe vegetation communities and associated wildlife. The bunchgrass
26 communities and associated shrubs found in the RNA provide valuable foraging, habitat and
27 nesting sites for many species of animals found in the area, including the Washington
28 ground squirrel habitat (*Urocitellus washingtoni*; Oregon Endangered and Federal Species of
29 Concern). The RNA is within the Boardman Bombing Range, owned and operated by the
30 U.S. Department of Defense; otherwise, the RNA is monitored and maintained by The
31 Nature Conservancy. The public is excluded from the Boardman Research Natural Area.¹²⁸
32

¹²⁵ Protected area descriptions derived from RFA1, Attachment 7-2; Protected Areas Supplement.

¹²⁶ B2HAMD1 RFA1 2023-06-08. Attachment 7-15, Table 2, has Glass Hill acreage of 1,728. Note that acreage for Glass Hill in RFA1 Attachment 7-2 is 1,230 which is confirmed from the Oregon State University Natural Areas Program Webpage database.

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Ffinr.oregonstate.edu%2Fsites%2Ffinr.oregonstate.edu%2Ffiles%2Fforegon_natural_areas_2020-final-draft.xlsx&wdOrigin=BROWSELINK. Accessed 06-12-2023.

¹²⁷ Communication between Kristen Gulick, Tetra Tech, and Lindsey Wise, Oregon State University, Institute for Natural Resources, July 13, 2022, and Meghan Ballard, Blue Mountains Conservancy, July 23, 2022, Attachment 7-2. B2HAMD1 RFA1 2023-06-08. Section 7.1.4. Comments from Ms. Geer indicated that the Glass Hill Preserve may be available for the public to access, however, open public access to the area is unclear. B2HAMD1 DPO Comments Geer 2023-07-18

¹²⁸ Communication between Kristen Gulick, Tetra Tech and Kelly Wallis, The Nature Conservancy, July 18, 2022, Attachment 7-2; OPRD 2020. B2HAMD1 RFA1 2023-06-08. Section 7.1.4.

1 Boardman/Willow Creek RNA (Boardman Area, COA 154); Morrow County, Oregon:

2
3 The Boardman/Willow Creek RNA is immediately west of the Boardman Bombing Range and
4 Boardman RNA in Morrow County, Oregon. Similar to the Boardman RNA, the site is also
5 part of the Columbia River Basin ecoregion and preserved to maintain Columbia River basin
6 steppe and grassland vegetation communities and associated wildlife. The RNA also
7 represents the largest contiguous Washington ground squirrel habitat (*Urocitellus*
8 *washingtoni*; Oregon Endangered and Federal Species of Concern) in Oregon and hosts
9 some of the highest densities of long-billed curlew (*Numenius americanus*; Oregon Sensitive
10 species) in the world. The RNA is part of a 22,000-acre privately owned nature
11 reserve/conservation easement managed by The Nature Conservancy and Oregon
12 Department of Fish and Wildlife. The public is excluded from the Boardman/Willow Creek
13 Research Natural Area.¹²⁹

14
15 Birch Creek Cove RNA Oregon Natural Areas Plan/Birch Creek Cove PRNA); Umatilla County,
16 Oregon:

17
18 The Birch Creek Cove RNA consists of approximately 411 acres of old growth forest and
19 wetland habitat located in the Blue Mountains ecoregion of Umatilla County, Oregon. The
20 RNA is managed by the U.S. Forest Service for it is confined within the Umatilla National
21 Forest. The RNA hosts a large grand-fir (*Abies grandis*) population as well as several wetland
22 obligate and facultative plant species. The National Forest offers numerous outdoor
23 recreation opportunities such as hiking and camping.

24
25 Government Draw RNA (Establishment Record); Union County, Oregon:

26
27 The Government Draw RNA consists of approximately 178 acres of old growth forest,
28 shrubland, and grassland located in the Blue Mountains ecoregion of Union County, Oregon.
29 The RNA was established in 2000 and is managed by the U.S. Forest Service for it is confined
30 within the Umatilla National Forest. The RNA hosts large ponderosa pine (*Pinus ponderosa*),
31 grand fir (*Abies grandis*), Douglas fir (*Pseudotsuga menziesii*), western larch (*Larix*
32 *occidentalis*), and lodgepole pine (*Pinus contorta*), stiff sagebrush (*Artemisia rigida*),
33 Sandberg’s bluegrass (*Poa sandbergii*), and bluebunch wheatgrass (*Agropyron spicatum*)
34 populations. It has historically been used as an area for big game hunting and hiking. It has
35 never been logged and, with fencing, has been protected from livestock grazing for 60
36 years.

37
38 Payette River Wildlife Area; State Wildlife Refuge or Management Areas (Payette River Wildlife
39 Management Area/Payette River WMA), Malheur County, Oregon:

40

¹²⁹ Communication between Kristen Gulick, Tetra Tech and Kelly Wallis, The Nature Conservancy, July 18, 2022, Attachment 7-2; OPRD 2020. B2HAMD1 RFA1 2023-06-08. Section 7.1.4.

1 The Payette River WMA consists of approximately 1,066 acres scattered along the Payette
2 and Snake Rivers, bordering Malheur County, Oregon and Payette County, Idaho. The WMA
3 was established in 1960 and is conserved for primarily waterfowl and upland bird habitat
4 and is managed by Idaho Fish and Game. Sections of the WMA are closed February 1 to July
5 31 to protect nesting waterfowl. The WMA is used for hunting and river-related recreation,
6 only non-motorized vehicles and foot travel are permitted.
7

8 Indian Creek RNA, Lands Designated in Federal Management Plan (Oregon Natural Areas
9 Plan/Indian Creek RNA); Union County, Oregon:

10
11 The Indian Creek RNA consists of approximately 1,003 acres of subalpine and old growth
12 forest located in the Blue Mountains ecoregion of Union County, Oregon. The RNA was
13 established in 1980 and is managed by the U.S. Forest Service because it is located entirely
14 within the Wallowa Whitman National Forest. The RNA hosts large lodgepole pine (*Pinus*
15 *contorta*), mountain hemlock (*Tsuga mertensiana*), and subalpine fir (*Abies lasiocarpa*)
16 populations. The National Forest offers numerous outdoor recreation opportunities such as
17 hiking and camping.
18

19 Rebecca Sand Hill RNA/ Area of Critical Environmental Concern (ACEC) (Four Rivers Field Office
20 Draft Resource Management Plan and Draft Environmental Impact Statement); Washington
21 County, Idaho:

22
23 The Rebecca Sandhill RNA/ACEC consists of approximately 240 acres of Bureau of Land
24 Management-managed land, east of the City of Weiser in Washington County, Idaho.
25 The RNA/ACEC was designated in 1988 and is managed for special status plants species,
26 including a large population of Mulford's milkvetch (*Astragalus mulfordiae*; Oregon and
27 Idaho Endangered Species and Federal Species of Concern), Aase's onion (*Allium aseae*;
28 Idaho Endangered). There are also known occurrences of, and habitat present within
29 the RNA/ACEC to host the Southern Idaho ground squirrel (*Urocitellus endemicus*; Idaho
30 Endangered).
31

32 Table 15: *Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary*
33 *Additions*, identifies the 80 protected areas evaluated in the *Final Order on ASC* as well as the 8
34 newly identified protected areas within the RFA1 analysis area.¹³⁰

¹³⁰ The combined inventory for protected areas identified for the ASC and for the site boundary additions proposed in RFA1 are 88 protected areas. Department emphasizes that the certificate holder is adding road and route alternatives to allow flexibility in design and construction of the facility. Depending on which final roads and routes are selected, the potential impacts to protected area would be reflected in Table 15: *Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions*.

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Blue Mountain Forest State Scenic Corridor	State Parks and Waysides	Umatilla, Union	0 mi ¹		3.7 mi	NW	0 mi ¹ (Access Road Crosses)	
Ladd Marsh WA/SNHA	State Wildlife Areas and Management Areas	Union	0 mi ¹		208.3 ft	E	4.5 mi (Access Road)	NW
Oregon Trail ACEC - NHOTIC Parcel	BLM ACECs	Baker	123.4 ft	NE	- ²	- ²	2.1 mi (Access Road)	SW
Owyhee River Below the Dam ACEC	BLM ACECs	Malheur	249 ft	SW	7.6 mi	SE	1.9 mi (Access Road)	E
Oregon Trail ACEC - Straw Ranch 1 Parcel	BLM ACECs	Baker	0.1 mi	SW	- ²	- ²	0.1 mi (Access Road)	E
Oregon Trail ACEC - Birch Creek parcel	BLM ACECs	Malheur	0.2 mi	SW	- ²	- ²	0.3 mi (Access Road)	E
Hilgard Junction State Recreation Area	State Parks and Waysides	Union	0.3 mi	E	0.4 mi	N	0.6 mi (Access Road)	SE
Deer Flat National Wildlife Refuge	National and State Wildlife Refuge	Malheur	0.4 mi	E	12.2 mi	E	0.6 mi (Access Road)	SW

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
(including Snake River Island Units)								
Oregon Trail ACEC - Tub Mountain Parcel	BLM ACECs	Malheur	0.5 mi	W	17.2 mi	N	1.5 mi (Access Road)	E
Columbia Basin - Coyote Springs WA	State Wildlife Areas and Management Areas	Morrow	0.5 mi	W	8.9 mi	N	12.2 mi (Access Road)	S
Farewell Bend State Recreation Area	State Parks and Waysides	Baker	0.7 mi	NE	- ²	- ²	0.4 mi (Access Road)	W
Oregon Trail ACEC - Blue Mountain Parcel	BLM ACECs	Union	0.9 mi	NE	6.7 mi	NW	0.9 mi (Access Road)	SW
Oregon Trail ACEC - Straw Ranch 2 Parcel	BLM ACECs	Baker	1.1 mi	NE	- ²	- ²	1.9 mi (Access Road)	SE
Oregon Trail ACEC - Powell Creek Parcel	BLM ACECs	Baker	1.2 mi	E	- ²	- ²	2.2 mi (Access Road)	W
Umatilla National Wildlife Refuge	National and State Wildlife Refuge	Morrow	1.3 mi	N	9.6 mi	N	12.7 mi (Access Road)	S
Powder River WSR (Scenic)	Scenic Waterway	Baker, Union	1.4 mi	E	14.8 mi	SE	9.8 mi (Access Road)	SW

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Powder River Canyon ACEC	BLM ACECs	Baker	1.4 mi	E	16.3 mi	SE	8.8 mi (Access Road)	SW
Lindsay Prairie Preserve/ SNHA	State Natural Heritage Areas	Morrow	1.6 mi	W	3.9 mi	SW	1.3 mi (Little Juniper Canyon Transmission Line Alternative)	E
Glass Hill Preserve/ SNHA ³	State Natural Area	Union	x ⁴	x ⁴	x ⁴	x ⁴	1.6 mi (Access Road)	W
Boardman RNA ³	Lands Designated in Federal Management Plan	Morrow	x ⁴	x ⁴	x ⁴	x ⁴	2.0 mi (Access Road)	S
Five Points Creek (Wild)	Scenic Waterway	Umatilla, Union	2.0 mi	NE	2.1 mi	NE	2.4 mi (Access Road)	S
South Alkali Sand Hills ACEC	BLM ACECs	Malheur	2.1 mi	E	12.6 mi	N	5.8 mi (Access Road)	W
Oregon Trail ACEC - White Swan Parcel	BLM ACECs	Baker	2.9 mi	E	- ²	- ²	2.9 mi (Access Road)	S

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Emigrant Springs State Heritage Area	State Parks and Waysides	Umatilla	3.3 mi	N	16.5 mi	NW	2.9 mi (Access Road)	SW
Succor Creek State Natural Area/SNA	State Parks and Waysides	Malheur	3.4 mi	SW	- ²	- ²	3.5 mi (Access Road)	NE
Red Bridge State Wayside	State Parks and Waysides	Union	4.8 mi	SW	- ²	- ²	5.2 mi (Access Road)	NE
Owyhee Views ACEC	BLM ACECs	Malheur	5.3 mi	SW	14.7 mi	S	7.2 mi (Access Road)	E
Umatilla Hatchery	National and State Fish Hatcheries	Morrow	5.5 mi	N	15.0 mi	NE	18.3 mi (Access Road)	S
Oregon Trail ACEC - Keeney Pass Parcel	BLM ACECs	Malheur	5.7 mi	E	5.7 mi	NE	5.4 mi (Access Road)	W
Lake Owyhee State Park	State Parks and Waysides	Malheur	6.0 mi	W	15.4 mi	S	8.1 mi (Access Road)	E
Boardman/Willow Creek RNA ³	Lands Designated in Federal Management Plan	Morrow	x ⁴	x ⁴	x ⁴	x ⁴	6.1 mi (Access Road)	E

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Eastern Oregon Ag Research Station	Agricultural Experimental Station	Union	6.4 mi	NE	7.0 mi	E	- ²	- ²
Irrigon Hatchery	National and State Fish Hatcheries	Morrow	6.6 mi	N	14.7 mi	NE	17.7 mi (Access Road)	SW
Jump Creek Canyon ACEC	BLM ACECs	Idaho	6.8 mi	SE	- ²	- ²	6.9 mi (Access Road)	NW
Birch Creek Cove RNA ³	Lands Designated in Federal Management Plan	Umatilla	x ⁴	x ⁴	x ⁴	x ⁴	6.9 mi (Access Road)	N
Rogers WA	State Wildlife Areas and Management Areas	Malheur	7.1 mi	E	12.0 mi	SE	6.7 mi (Access Road)	SW
Columbia Basin - Irrigon WA	State Wildlife Areas and Management Areas	Morrow, Umatilla	7.4 mi	NE	14.9 mi	NE	17.9 mi (Access Road)	SW
Elkhorn - North Powder WA Tract	State Wildlife Areas and Management Areas	Baker, Union	7.5 mi	W	7.8 mi	S	7.5 mi (Access Road)	NE
Catherine Creek State Park	State Parks and Waysides	Union	7.7 mi	NE	- ²	- ²	9.0 mi (Access Road)	W

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Elkhorn - Auburn WA Tract	State Wildlife Areas and Management Areas	Baker	7.9 mi	SW	- ²	- ²	8.4 mi (Access Road)	NE
Starkey Experimental Forest/Game Management Area	Experiment Area	Umatilla, Union	8.0 mi	S	12.8 mi	W	8.7 mi (Access Road)	NW
Battle Mountain Forest State Scenic Corridor	State Parks and Waysides	Umatilla	8.0 mi	S	- ²	- ²	8.4 mi (Access Road)	N
McKay Creek National Wildlife Refuge	National and State Wildlife Refuge	Umatilla	9.7 mi	N	- ²	- ²	9.6 mi (Access Road)	S
Unity Forest State Scenic Corridor	State Parks and Waysides	Baker	10 mi	W	- ²	- ²	10.6 mi (Access Road)	NE
Government Draw RNA ³	Lands Designated in Federal Management Plan	Union	x ⁴	x ⁴	x ⁴	x ⁴	10.8 mi (Access Road)	NW
Upper Grande Ronde River (Recreational)	Scenic Waterway	Union	10.9 mi	SW	10.6 mi	S	11.0 mi (Access Road)	NE
Oregon Trail ACEC - Echo Meadows Parcel	BLM ACECs	Umatilla	11.1 mi	NE	15.2 mi	E	10.9 mi (Access Road)	NE

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Keating Riparian ACEC/RNA	BLM ACECs	Baker	11.2 mi	E	- ²	- ²	15.0 mi (Access Road)	W
North Fork Catherine Creek (Recreational)	Scenic Waterway	Union	11.3 mi	E	17.2 mi	E	13.6 mi (Access Road)	W
Honeycombs RNA	BLM ACECs	Malheur	11.3 mi	SW	- ²	- ²	11.5 mi (Access Road)	NE
Squaw Creek RNA	BLM ACECs	Idaho	11.4 mi	SE	- ²	- ²	11.5 mi (Access Road)	NW
Elkhorn - Roth WA Tract	State Wildlife Areas and Management Areas	Baker	11.6 mi	W	18.4 mi	S	13.1 mi (Access Road)	SE
Ontario State Recreation Site	State Parks and Waysides	Malheur	11.9 mi	E	- ²	- ²	13.9 mi (Access Road)	NW
Elkhorn - Muddy Creek WA Tract	State Wildlife Areas and Management Areas	Baker	12.1 mi	W	16.5 mi	S	14.5 mi (Access Road)	NE
Payette River Wildlife Area ³	State Wildlife Refuge or Management Areas	Malheur	x ⁴	x ⁴	x ⁴	x ⁴	12.7 mi (Access Road)	NW

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Malheur Experiment Station	Agricultural Experimental Station	Malheur	13.1 mi	E	19.8 mi	NE	15.5 mi (Access Road)	NW
Hunt Mountain ACEC	BLM ACECs	Baker	13.1 mi	W	19.7 mi	W	12.9 mi (Access Road)	W
North Fork Catherine Creek (Wild)	Scenic Waterway	Union	13.4 mi	E	18.3 mi	E	15.2 mi (Access Road)	W
Eagle Cap Wilderness	Wilderness area	Baker, Union, Wallowa	13.7 mi	NE	16.6 mi	NE	14.4 mi (Access Road)	W
Long-billed Curlew Habitat Area ACEC	BLM ACECs	Idaho	14.7 mi	E	19.6 mi	E	12.4 mi (Access Road)	E
Dry Creek Gorge ACEC	BLM ACECs	Malheur	15 mi	W	18.7 mi	S	15.9 mi (Access Road)	NE
South Ridge Bully Creek RNA	BLM ACECs	Malheur	15.1 mi	W	- ²	- ²	17.4 mi (Access Road)	SE
North Powder River (Scenic)	Scenic Waterway	Baker	15.2 mi	W	17.8 mi	S	16.5 mi (Access Road)	NE

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
McBride Creek RNA	BLM ACECs	Idaho	15.3 mi	S	- ²	- ²	15.4 mi (Access Road)	N
Upper Grande Ronde River (Wild)	Scenic Waterway	Grant, Union	15.7 mi	SW	14.9 mi	S	16.4 mi (Access Road)	NE
Columbia Basin - Power City WA	State Wildlife Areas and Management Areas	Umatilla	15.7 mi	NE	- ²	- ²	- ²	- ²
Hermiston Ag Research and Extension Center	Agricultural Experimental Station	Umatilla	15.8 mi	E	18.6 mi	E	19.3 mi (Access Road)	S
Indian Creek RNA ³	Lands Designated in Federal Management Plan	Union	x ⁴	x ⁴	x ⁴	x ⁴	16.3 mi (Access Road)	SW
Columbia Basin Ag Research Station	Agricultural Experimental Station	Sherman, Umatilla	16.6 mi	N	- ²	- ²	17.7 mi (Access Road)	S
Eagle Creek (Recreational)	Scenic Waterway	Baker	16.7 mi	E	- ²	- ²	- ²	- ²
Rebecca Sand Hill RNA/ACEC ³	Lands Designated in Federal Management Plan	Idaho/Washington	x ⁴	x ⁴	x ⁴	x ⁴	16.8 mi (Access Road)	W
Hixon Columbian Sharp-tailed	BLM ACECs	Idaho/Washington	17.7 mi	NE	- ²	- ²	17.3 mi (Access Road)	SW

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Grouse Habitat Area ACEC								
North Ridge Bully Creek RNA	BLM ACECs	Malheur	17.7 mi	W	- ²	- ²	20.0 mi (Access Road)	SE
Horn Butte ACEC	BLM ACECs	Gilliam, Morrow	18.1 mi	W	18.2 mi	W	18.1 mi (Access Road)	W
Leslie Gulch ACEC	BLM ACECs	Idaho	18.1 mi	SW	- ²	- ²	18.2 mi (Access Road)	NE
Columbia Basin - Willow Creek WA/SNHA	State Wildlife Areas and Management Areas	Gilliam	18.3 mi	W	18.8 mi	NW	19.9 mi (Access Road)	SE
North Fork Umatilla Wilderness	Wilderness area	Umatilla, Union	18.7 mi	NE	- ²	- ²	18.7 mi (Access Road)	SW
North Fork John Day Wilderness	Wilderness area	Baker, Grant, Umatilla	19.1 mi	SW	19.2 mi	SW	19.1 mi (Access Road)	NE
Hammond Hill Sand Hills RNA	BLM ACECs	Malheur	19.2 mi	W	- ²	- ²	19.5 mi (Access Road)	NE
Ukiah-Dale Forest State Scenic Corridor	State Parks and Waysides	Umatilla	19.3 mi	S	- ²	- ²	19.5 mi (Access Road)	N

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Minam River (Wild)	Scenic Waterway	Union, Wallowa	19.4 mi	E	- ²	- ²	- ²	- ²
The Minam Scenic Waterway	Scenic Waterway	Union, Wallowa	19.6 mi	E	- ²	- ²	- ²	- ²
Cold Springs National Wildlife Refuge	National and State Wildlife Refuge	Umatilla	20.9 mi ⁵	NE	- ²	- ²	- ²	- ²
Sumpter Valley Dredge SNHA	State Natural Heritage Areas	Baker	21.3 mi ⁵	W	- ²	- ²	19.5 mi (Access Road)	E
Hat Rock State Park	State Parks and Waysides	Umatilla	21.3 mi ⁵	E	- ²	- ²	- ²	- ²
North Fork John Day River (Recreational)	Scenic Waterway	Grant, Umatilla	21.4 mi ⁵	W	- ²	- ²	- ²	- ²
North Fork John Day River (Wild)	Scenic Waterway	Baker, Grant	21.7 mi ⁵	W	- ²	- ²	19.1 mi (Access Road)	NE
McNary National Wildlife Refuge	National and State Wildlife Refuge	Umatilla	24.5 mi ⁵	NE	- ²	- ²	- ²	- ²

1. Crossing of the protected area is allowed per OAR 345-022-0040(2), (3).
 2. Outside analysis area for route or related or supporting facility.
 3. New protected area in analysis area since *Final Order on ASC* - September 2022.
 4. Potential impacts from approved routes in *Final Order on ASC* not evaluated for protected area.
 5. Location of protected areas associated with transmission line routes is relative to each route segment's centerline, not the site boundary. There may be values greater than 20 miles listed because temporary Project features (multi-use areas, pulling and tensioning sites) are located several miles away from route centerlines.

Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
<p>^{6.} Location of protected areas associated with transmission line routes is relative to each route segment's centerline, not the site boundary. There may be values greater than 20 miles listed because temporary Project features (multi-use areas, pulling and tensioning sites) are located several miles away from route centerlines.</p> <p>Source: Derived from <i>Final Order on ASC</i> Table PA-1: Protected Areas within Analysis Area and Distance from Approved and Alternative Transmission Line Routes and RFA1 Attachment 7-2, Table 1. Summary of Impact Determinations for Protected Areas.</p>								

1

1 *III.F.1.b Potential Impacts to Protected Areas*

2

3 III.F.1.b.1 Protected Areas Crossed by RFA1 Site Boundary Additions – Exceptions (OAR 345-022-
4 0040(2) and (3))

5

6 RFA1 includes road alternatives that would also cross the Blue Mountain Forest State Scenic
7 Corridor (see Figure 4-2; Map 12; UN-034 and Map 13; UN-625).¹³¹ Road segment UN-034 is
8 approximately 589 feet long and is largely within the previously approved site boundary with
9 only a small segment of new site boundary that overlaps with the Corridor, and UN-625 is
10 approximately 1,761 feet long and also mostly within the previously approved site boundary
11 with minor adjustments that extend the site boundary within the Corridor. The *Final Order on*
12 *ASC* evaluated the facility crossing the Blue Mountain Forest State Scenic Corridor and Council
13 found that the facility, including related or supporting facilities, would be located entirely
14 within a utility corridor designated by the Wallowa Whitman National Forest as a “Power and
15 Transportation Facility Retention Corridor;” and the analysis of alternative routes that would be
16 more impactful was sufficient to allow the facility to be sited through the Blue Mountain Forest
17 State Scenic Corridor in accordance with OAR 345-022-0040(2). The Department recommends
18 Council find that the minor changes to road segments which significantly overlap within the
19 already approved site boundary do not impact Council’s previous findings of compliance with
20 OAR 345-022-0040(2).

21

22 Protected Areas Condition 1 (Condition GEN-PA-01) requires that the certificate holder
23 coordinate construction activities in Ladd Marsh Wildlife Area within ODFW’s wildlife area
24 manager, Protected Areas Condition 2 (Condition GEN-PA-02) requires that the final facility
25 design avoid Ladd Marsh. These conditions apply to the certificate holder, but are not
26 implicated by the proposed RFA1 site boundary additions.

27

28 III.F.1.b.2 Potential Noise Impacts

29

30 As summarized in Section III.R.1., *Noise Control Regulations* of this order, predicted noise levels
31 associated with the combined operation of five pieces of equipment is 83 dBA at 50 feet, 79
32 dBA at 100 feet, and attenuates to 46 dBA at 6,400 feet.¹³² For reference, classroom chatter has
33 an approximate dBA of 70 and a soft whisper is a dBA of approximately 40 dBA. Council
34 previously found that protected areas within approximately one-half mile from facility
35 construction may experience short term impacts. These impacts would progress along the
36 corridor of the transmission line route, and no area would be exposed to construction noise for
37 the entire construction period. Further, noise also attenuates with distance, topography, and
38 vegetative screening so construction noise at protected areas within one-half mile of the facility
39 may be lower during actual facility construction.

¹³¹ See also RFA1 Attachment 4-1. RFA1 Supplement to Final Order Attachment B-5 Appendix A for road lengths and other data.

¹³² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 299 and Table PA-2: Predicted Noise Levels from General Construction Activities.

1
2 The closest protected areas impacted by the proposed RFA1 site boundary additions are
3 associated with access roads. Noise from road construction would predominately result from
4 operation of construction vehicles and equipment (i.e. backhoe, dump truck, grader, pickup
5 truck, and tractor), which generally operate at lower noise levels than other construction-
6 related noise (i.e. blasting, augers). The Lindsay Prairie Preserve is 1.3 miles from the Little
7 Juniper Canyon Transmission Line Alternative. At a 1.3-mile distance it would not be anticipated
8 that there would be construction-related noise experienced at the protected area. The
9 certificate holder provides an evaluation of noise at protected areas within the analysis area for
10 RFA1 associated with each road and transmission line alternative in RFA1 Attachment 7-2, Table
11 1: *Summary of Impact Determinations for Protected Areas*. The Department recommends
12 Council find that noise experienced at protected areas from construction of the roads and
13 routes proposed in RFA1 would be similar or less than Council evaluated and approved in the
14 ASC, and any noise would be for a short duration.

15
16 *Operation*

17
18 Potential noise impacts during facility operation includes inspections, vegetation maintenance
19 (including chain saws or other power equipment), and corona noise from the transmission line.
20 Operational noise associated with the roads proposed in RFA1 would include infrequent driving
21 on roads for inspections and maintenance and would not impact protected areas. At 1.3 miles
22 away, operational noise from the Little Juniper Canyon Transmission Line Alternative would not
23 be audible. The Department recommends Council find that the road and transmission line
24 alternatives proposed in RFA1 would not impact Councils' previous findings and would not
25 impact any protected areas.

26
27 III.F.1.b.3 Potential Traffic-Related Impacts

28
29 *Construction*

30
31 Construction of the roads and transmission line alternatives would cause short-term impacts to
32 those protected areas that are near the site boundary additions or where construction traffic
33 routes pass near those protected areas, however, these potential impacts would be similar or
34 less than Council previously evaluated and approved. Council previously found that traffic
35 impacts would be short-term and limited in duration. Some protected areas would have no
36 impacts from construction due to the distance from the site boundary additions as well as
37 planned haul and commuting routes. Some protected areas would have minor construction-
38 related traffic impacts due to proximity of the site boundary additions, or haul/commute
39 routes, near the protected areas. The certificate holder provides an evaluation of traffic impacts
40 at protected areas in the analysis area for RFA1 associated with each road and transmission line
41 alternative in RFA1 Attachment 7-2, Table 1: *Summary of Impact Determinations for Protected*
42 *Areas*. Attachment 7-2, Table 1 provides a description of the facility components associated
43 with the proximity to each protected area and describes the haul routes that would be used,
44 and alternative routes used to indicate that there would be a less than significant impact. Public

1 Services Condition 2 requires the finalization of county-specific Transportation and Traffic
2 Plan(s), which would include measures that would reduce construction related traffic impacts
3 such as flagging, posting caution signs and using pilot cars. This condition continues to apply to
4 the facility and certificate holder, and the Department recommends Council find that the road
5 and transmission line routes proposed in RFA1 would not cause significant impacts to protected
6 areas within the analysis area.

7
8 *Operation*
9

10 Council previously found that no traffic impacts to protected areas are anticipated during
11 facility operation. Facility operation would involve very infrequent maintenance and inspections
12 by the certificate holder, expected at one or two inspections per year. The Department
13 recommends Council find that the road and transmission line alternatives proposed in RFA1
14 would not be different from the *Final Order on ASC*.

15
16 III.F.1.b.4 Potential Impacts from Water Use and Wastewater Disposal
17

18 *Construction and Operation*
19

20 Council previously found that construction-related water use would include approximately 36.5
21 million gallons over an approximately 36-month period for transmission line structures. Council
22 also previously found that construction-related wastewater associated with foundation slurry
23 and concrete washout would be properly managed and disposed of and would not be likely to
24 result in significant adverse impacts to any protected areas. If selected for construction, the
25 proposed additional transmission line routes would only be approximately 1.8 miles longer than
26 the routes they would replace approved in the ASC. Therefore, the Department recommends
27 Council find that this small increase would not alter its previous findings and that Council finds
28 that water and wastewater generated from construction and operation of the site boundary
29 additions proposed in RFA1 would not impact protected areas.¹³³

30
31 III.F.1.b.5 Potential Visual Impacts from Facility Structures
32

33 III.F.1.b.5.1 Methodology for Visual Impact Assessment
34

35 As described in Section I.A., *Scope of Council's Review*, in this order, for amendments to the site
36 certificate that would add area to the site boundary, Council must determine whether the
37 preponderance of evidence on the record supports the conclusion that the portion of the
38 facility within the area added to the site boundary by the RFA complies with all laws and
39 Council standards applicable to an original site certificate application. To evaluate the potential
40 visual impacts to protected areas associated with the road segments and transmission line
41 routes proposed in RFA1, the certificate holder applied similar methodologies as what was

¹³³ B2HAMD1 RFA1 2023-06-08. Table 4.1-1.

1 conducted for the ASC. As indicated in the beginning of this Section, the certificate holder
2 identified protected areas identified in OAR 345-001-0010(26) in the 20-mile analysis area.

3
4 To update the visual impact analyses for the road and route alternatives proposed in RFA 1, the
5 certificate holder followed similar visual impact assessment methodology, described in ASC
6 Exhibit L, Attachment L-3, approved by Council in the *Final Order on ASC*.¹³⁴ For protected areas
7 not located on BLM or USFS land, one of the two procedures based on whether the resource
8 was located in forested or non-forested areas; resources located in non-forested areas were
9 analyzed using the BLM methodology, and those located in forested areas were analyzed using
10 the USFS methodology. The methodology incorporates elements from the USFS methodology
11 to assess the baseline scenic conditions in forested areas and elements from the BLM’s VRM to
12 assess baseline scenic conditions in non-forested areas.¹³⁵ The analysis area for protected areas
13 is 20 miles; however, similar to the ASC, the visual impact assessment extends 5 miles from the
14 proposed site boundary additions in non-forested settings, and 10 miles in forested settings.
15 Beyond those distances, Council previously found that visibility of the facility components
16 would be negligible.¹³⁶ Because the vast majority of site boundary additions in RFA1 are roads,
17 which do not have a vertical visual component associated with them, the visual impact
18 assessment was further defined by proximity, i.e., foreground (<0.5 miles), middleground (0.5
19 to 5 miles), or background distances (> 5 miles).

20
21 To determine whether potential visual impacts would be “significant,” Council approved the
22 methodology which takes into consideration the combined outcome of context of the impact,
23 impact intensity, and the degree to which the possible impacts are caused by the proposed
24 action. This is done by applying the Council’s definition of “significant,” meaning having an
25 important consequence, either alone or in combination with other factors, based upon the
26 magnitude and likelihood of the impact on the affected human population or natural resources,
27 or on the importance of the natural resource affected, considering the context of the action or
28 impact, its intensity and the degree to which possible impacts are caused by the proposed
29 action.¹³⁷ Table 16: *Definition of Significant (per Council’s Rule OAR 345-001- 0010(29)) and*
30 *Interpretation for Visual Impacts for Protected Areas, Recreation, and Scenic Resources*, below

¹³⁴ Excerpt from Oregon Supreme Court Decision for the facility regarding methodologies for visual impact assessments, “... nothing in the rule required Idaho Power to utilize a particular methodology or specifically account for subjective perceptions and reactions in assessing whether the transmission line would be likely to result in “significant adverse visual impacts” to scenic resources. Moreover, as explained in the final order, the methodology used to assess the visual impacts of the transmission line did take viewers’ subjective perceptions into account. Idaho Power developed a detailed visual-impact assessment methodology and prepared a comprehensive visual impact study...” B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, page 811.

¹³⁵ Certificate holder notes that no site visits were completed for the RFA 1 visual analysis, which solely relies on desktop data with the support of ASC field assumptions (e.g., existing vegetation screening, site usage, etc.), as applicable, that are not readily available from online sources. B2HAMD1 RFA1 2023-06-08. Attachment 7-2, Table 1.

¹³⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 305.

¹³⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 305-306.

1 is taken from the *Final Order on ASC* to summarize how the certificate holder quantified the
 2 Council’s definition into measurable and repeatable methodology.¹³⁸

3
 4 As is noted in Sections IV.J., *Scenic Resources* and IV.L, *Recreation*, the same visual resource
 5 impact assessment methodology was used by the certificate holder to assess visual impacts
 6 from the proposed site boundary additions in RFA1 to resources considered in those sections.
 7

Table 16: Definition of Significant (per Council’s Rule OAR 345-001- 0010(29)) and Interpretation for Visual Impacts for Protected Areas, Recreation, and Scenic Resources)

Excerpt	Interpretation for Exhibit L, R, T
“having an important consequence,”	An important consequence is considered a significant impact.
“either alone or in combination with other factors,”	Qualifying language suggests that an “important consequence” may be caused by the proposed development either alone or in combination with other past or present actions.
“based upon the magnitude and likelihood of the impact”	Magnitude represents the size and scale of the impact, and is measured in terms of visual contrast and scale dominance. Likelihood represents the probability of occurrence of an impact; for the purposes of Exhibit L, impacts analyzed were assumed to be likely to occur.
“on the affected human population”	The impact on the human population is measured in terms of the viewer’s perception of impacts to valued scenic attributes of the protected area.
“or [on the] natural resources”	The impact to the natural resource is measured in terms of the potential change in scenic quality and/or landscape character of the protected area.
“or on the importance of the natural resource affected”	The disjunction of the magnitude of the impact from the importance of the natural resource suggests that an impact to scenic values may not result in an “important consequence” if the scenic value affected is not considered important to the protected area.
“Considering the context of the action or impact,”	The Council shall also consider the other “mitigating” (or “aggravating”) contextual factors, such as the extent to which impacts to visual values are consistent with the standards and guidelines of relevant land management objectives of the protected area.
“[the impact’s] intensity...”	The intensity of the impact considers how impacts would manifest on the landscape by assessing the combined

¹³⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 432; Table SR-2: Definition of Significance (per Council’s Rule OAR 345-001- 0005(52)) and Interpretation for Visual Impacts in Exhibit L, R, T). Note that the Table name in this order has updated OAR reference.

Table 16: Definition of Significant (per Council’s Rule OAR 345-001- 0010(29)) and Interpretation for Visual Impacts for Protected Areas, Recreation, and Scenic Resources)

Excerpt	Interpretation for Exhibit L, R, T
	effect of resource change and viewer perception.
“...and the degree to which the possible impacts are caused by the proposed action.”	Consider the extent to which adverse impacts are caused by the proposed facility, as opposed to other past or present actions. The contribution of this action to potential cumulative (additive) impacts should be disclosed.

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Final Order on ASC provided a summary of the reasons why Council concurred with the certificate holders visual impact assessment methodology:¹³⁹

- The facility would cross both BLM and USFS land, and on those lands, the certificate holder is required to utilize those agency’s respective visual resource impact assessment methods;
- Both the BLM and USFS approved the facility location in its ROD(s), indicating compliance with the respective visual impact methodologies and standards;
- The certificate holder adapted each of the methodologies to use evaluative criteria based upon the Council’s definition of “significant” under OAR 345-001-0010(29);
- The BLM and USFS visual impact methodologies provide an objective system to evaluate visual impacts;
- Using the BLM and USFS methods to assess visual impacts to EFSC scenic resources is consistent with the statutory direction at ORS 469.370(13) to conduct a site certificate review in a “manner that is consistent with and does not duplicate the federal agency review.”

III.F.1.b.5.2 Results of Visual Impact Assessment

RFA1 Attachment 7-2, Table 2: *Detailed Visual Analysis of Protected Areas*, provides a summary of the results of the visual impact assessment following the above-described methodology including baseline characteristics, visual impact assessment, and significant determinations. Certificate holder also conducted a zone of visual influence (ZVI) viewshed analysis, provided in RFA1 Figure 7-12, which illustrates the visibility of facility towers associated with the proposed transmission line routes in RFA1. The viewshed analysis Figure 7-12 presents the viewshed analysis from the approved routes as well as the routes in RFA and identifies the protected areas within the analysis area for RFA1. As highlighted above, because the majority of proposed site boundary additions in RFA1 are roads, many of which overlap with previously approved roads, the certificate holder further refined the description of potential visual impacts from roads by the roads’ proximity to protected areas. Because the proposed roads have no vertical or aerial components, there would be no or minimal visual impact to a protected area more

¹³⁹ ¹³⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 432; Section IV.J., Scenic Resources.

1 than 5 miles away, therefore, the Department recommends Council find that roads further than
2 5 miles away from a protected area would have no or minimal visual impact. The certificate
3 holder evaluates every proposed road and route in RFA1, Attachment 7-2 regardless of
4 distance, however, the Department synthesized RFA1 Section 7.1.4, Attachment 7-2; Tables 1
5 and 2 as well as Figures 7-12 and provides a visual impact summary below in Table 17: *Visual*
6 *Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed*. Table 17 presents
7 the visual impact assessment and significance conclusions for protected areas within 5 miles
8 from roads and within 10 miles from proposed transmission line routes because Council
9 previously found that facility structures beyond 10 miles of a protected area would not be
10 visible or would have negligible visual impacts.

11

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Blue Mountain Forest State Scenic Corridor	OR - Umatilla, Union	Crosses (Access Road Changes in Union County) ³	Certificate holder indicates that RFA1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a foreground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA1 modeled bare earth viewshed (thus no towers are visible). Steep viewing angles, tall mature vegetation, and topography will continue to screen views of any RFA1 road additions. Certificate holder analysis indicates viewers will continue to have primarily intermittent and peripheral views. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Oregon Trail ACEC - Straw Ranch 1 Parcel	OR - Baker	0.1 mi E (Access Road Changes in Baker County) Approx. 8 mi NW (True Blue Gulch Transmission Line Alternative)	Certificate holder indicates that RFA1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes followed by the True Blue Gulch Transmission Line Alternative) will introduce medium intensity impacts at a foreground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Proposed Site Boundary Additions will remain head-on and peripheral, depending on the viewer’s location and will be from a neutral vantage point. However, existing views include I-84, a gravel quarry, scattered residential and ranching development, gravel surface roads, and two transmission lines. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA1 site boundary addition, the True Blue Gulch Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Oregon Trail ACEC - Birch Creek parcel	OR - Malheur	0.3 mi E (Access Road Changes in Malheur County) Approx. 4 mi SE (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes followed by the Durbin Quarry Transmission Line Alternative) will introduce medium intensity impacts at a foreground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Landscape character, particularly as viewed to the north toward Big Bend, will remain as a result of RFA1 Proposed Site Boundary Additions. Topography will continue to partially screen the Project from view. Views from the trail will continue to be intermittent. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Durbin Quarry Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Farewell Bend State Recreation Area (SRA)	OR - Baker	0.4 mi W (Access Road Changes in Baker County) Approx 2.5 mi SE (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a foreground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be most visible from shoreline day-use and overnight use areas; mature trees will screen views from the interior of the SRA. The Brownlee Reservoir, which is the primary scenic attribute of the SRA, will persist and views from the SRA to the east will continue to be unaffected. Views will continue to be head-on or peripheral, depending on the location of the viewer, and from a neutral vantage point. Existing views include rural development and I-84. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Hilgard Junction State Park	OR - Union	0.6 mi SE (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be partially screened by topography and not visible from camping area or areas near the river where recreation use will be highest. Existing views include OR-244 and a transmission line. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Deer Flat National Wildlife Refuge (NWR) (including Snake River Island Units)	OR - Malheur; ID - Ada, Canyon, Owyhee, Payette, Washington	0.6 mi SW (Access Road Changes in Malheur County) Approx. 6.5 mi NW (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes followed by the Durbin Quarry Transmission Line Alternative) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). One of 101 islands within the NWR will remain within 2 miles of the RFA 1 Proposed Site Boundary Additions (i.e., Huffman Island), otherwise a majority of the NWR will continue to have no visual impacts. Due to access roads not having an aerial component, the visual impacts are anticipated to be negligible as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Durbin Quarry Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is not currently managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Oregon Trail ACEC - Blue Mountain Parcel	OR - Union	0.9 mi SW (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be almost entirely screened from view due to dense/mature vegetation and topography to the west. Any views will remain intermittent and primarily experienced from a neutral or superior vantage point such that viewer perception will continue to be low. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Lindsay Prairie Preserve/ State Natural Heritage Area (SNHA)	OR - Morrow	1.3 mi E (Little Juniper Canyon Transmission Line Alternative)	Certificate holder indicates that RFA1 Proposed Site Boundary Additions closest in proximity (i.e., Little Juniper Canyon Transmission Line Alternative) will introduce medium intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views as a result of the RFA 1 transmission line Proposed Site Boundary Additions will continue to be experienced from within the canyon and will be primarily blocked by topography. Any views that aren't screened will remain intermittent. Existing views include roads, a gravel quarry, agricultural fields, a transmission line, and dispersed rural development. Towers that are visible within the protected area as a result of the Little Juniper Canyon Transmission Line Alternative will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is not currently managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Oregon Trail ACEC - Tub Mountain Parcel	OR - Malheur	1.5 mi E (Access Road Changes in Malheur County) Approx 7.5 mi S (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes followed by the Durbin Quarry Transmission Line Alternative) will introduce medium intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Proposed Site Boundary Additions will continue to be primarily peripheral and intermittent and from a neutral vantage point. Topography will continue to partially screen the Project from view. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Durbin Quarry Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to be medium intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Glass Hill Preserve/ SNHA	OR - Union	1.6 mi W (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will introduce mild visual contrast and appear co-dominant with the landscape and existing infrastructure (e.g., interstate, transmission). Viewer exposure may be negligible since the area is likely restricted from public access , with views of the project being from mostly neutral or elevated vantage points. The site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Owyhee River Below the Dam ACEC	OR - Malheur	1.9 mi E (Access Road Changes in Malheur County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Views of any RFA 1 road additions will continue to be episodic as visitors travel along the roadway and any views from the Lower Owyhee Watchable Wildlife interpretive site will be located behind the viewer. Topography will continue to partially screen the Project from view. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Oregon Trail ACEC - Straw Ranch 2 Parcel	OR - Baker	1.9 mi SE (Access Road Changes in Baker County) Approx. 10 mi NW (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be partially screened due to topography to the south/southwest and will otherwise appear generally subordinate as compared to existing infrastructure (i.e., transmission lines). Any views will remain intermittent due to visual obstructions and experiences from a neutral vantage point. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Boardman RNA	OR - Morrow	2.0 mi S (Access Road Changes in Morrow County) Approx. 7 mi NW (Little Juniper Canyon Transmission Line Alternative)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes followed by the Little Juniper Canyon Transmission Line Alternative) will introduce medium intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Proposed Site Boundary Additions will continue to be primarily peripheral and intermittent and from a neutral or elevated vantage point. Topography will continue to partially screen the Project from view. Existing views include wind turbines, solar facilities, transmission lines, roads, and agricultural irrigation equipment. Public access is not permitted within the resource. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Little Juniper Canyon Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is not currently managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Oregon Trail ACEC – National Historic Oregon Trail Interpretive Center (NHOTIC) Parcel	OR - Baker	2.1 mi SW (Access Road Changes in Baker County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will remain predominately peripheral or intermittent and experienced from an elevated vantage point. Existing views include OR-86, transmission line, and agricultural and residential development within the Baker Valley. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Oregon Trail ACEC - Powell Creek Parcel	OR - Baker	2.2 mi W (Access Road Changes in Baker County) Approx. 10 mi SE (True Blue Gulch Transmission Line Alternative)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes followed by the True Blue Gulch Transmission Line Alternative) will introduce medium intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Proposed Site Boundary Additions will remain head-on and peripheral, depending on the viewer’s location and will be from an inferior vantage point. However, existing views include I-84 and two transmission lines. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the True Blue Gulch Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Five Points Creek (Wild)	OR - Umatilla, Union	2.4 mi S (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will not be visible from within the canyon and is screened by topography. Any views from atop the canyon will be limited due to the scarce visitation outside of the canyon itself. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Oregon Trail ACEC - White Swan Parcel	OR - Baker	2.9 mi S (Access Road Changes in Baker County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce no visual impacts; this lack of impact is the same as what was previously approved for the ASC. Resource is completely outside of the RFA 1 modeled bare earth viewshed (see Figure 7-12 for a comparison with the previously approved viewshed). Thus, the resource was not analyzed for visual impacts.
Emigrant Springs State Heritage Area	OR - Umatilla	2.9 mi SW (Access Road Changes in Umatilla County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be almost entirely screened from view by dense/mature vegetation. Viewer perception will remain low as any views will be primarily intermittent due to screening. The site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Succor Creek State Natural Area (SNA)	OR - Malheur	3.5 mi NE (Access Road Changes in Malheur County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be limited due to the location within a deep, rocky canyon, creating an enclosed landscape, with most views of the Project generally blocked by topography. Any views will remain limited and intermittent due to the deep, rugged canyon setting of the natural area. The site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Ladd Marsh Wildlife Area/SNHA	OR - Union	4.5 mi NW (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low-intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will remain backdropped against the dark-colored hills. Any views will continue to be head-on or peripheral and intermittent or continuous depending on the activity of the viewer (e.g., viewing wildlife at a viewpoint, hiking, driving, hunting, or fishing). Viewer geometry will be primarily neutral or inferior. Existing views include a transmission line, buried pipeline, and major transportation corridors. The site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

Table 17: Visual Impact Summary for Roads and Routes Proposed in RFA1 within Viewshed

Site Boundary Addition within Viewshed of Protected Area Resource¹ (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA 1 Proposed Road/Route	Visual Impacts²
Boardman/Willow Creek RNA	OR - Morrow	6.1 mi E (Access Road Changes in Morrow County) Approx. 8 mi NW (Little Juniper Canyon Transmission Line Alternative)	Certificate holder indicates that RFA 1 Proposed Site Boundary Additions closest in proximity (i.e., access road changes followed by the Little Juniper Canyon Transmission Line Alternative) will introduce medium intensity impacts at a background viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Proposed Site Boundary Additions will continue to be primarily peripheral and intermittent and from a neutral or elevated vantage point. Topography will continue to partially screen the Project from view, otherwise over half of the resource is outside of the 10-mile visual analysis area. Existing views include views wind turbines, solar facilities, transmission lines, roads, and agricultural irrigation equipment. Under the same management as the Boardman RNA, public access is not permitted within the resource. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Little Juniper Canyon Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is not currently managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA 1 (see Figure 7-12).

1. Visual impact assessment extends 5 miles from the proposed site boundary additions in non-forested settings, and 10 miles in forested settings. Table summarizes visual impacts within 5 miles for roads and 10 miles for transmission line routes. Department recommends Council find that roads beyond 5 miles from a protected area would have minimal or no visual impact because there are no vertical features associated with roads.
2. See *Final Order on ASC, Section IV.F.5., Potential Visual Impacts from Facility Structures*, for a summary of methods for visual impact assessment and Exhibit L, Attachment L-3 of the ASC. For RFA1, roads are further evaluated by proximity, i.e., foreground (<0.5 miles), middleground (0.5 to 5 miles), or background distances (> 5 miles), because they lack vertical features.
3. Crossing of the protected area is allowed per OAR 345-022-0040(2).

Source: Derived from Department evaluation of RFA1, Attachment 7-2, Table 1 and Table 2.

1 Because the certificate holder utilized the similar methodology that was done for the ASC for
2 the proposed roads and transmission line routes, and applied an evaluation for proposed roads
3 individually when not associated with a transmission line route, and for the impact and
4 significant assessment established in Table 14: Visual Impact Summary for Roads and Routes
5 Proposed in RFA1 within Viewshed, the Department recommends that Council find that the
6 proposed site boundary additions would not create a significant adverse impact to protected
7 areas within the analysis area.

8
9 **III.F.2. Conclusions of Law**

10
11 Based on the foregoing analysis, and subject to compliance with the existing site certificate
12 conditions, the Department recommends the Council find that the areas added to the site
13 boundary by RFA1 that are located within the boundaries of a protected area remains
14 compliant OAR 345-022-0040(2), and is that the design, construction and operation of the
15 proposed RFA1 site boundary additions are not likely to result in significant adverse impact to
16 any protected areas.

17
18 **III.G. RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050**

19
20 *To issue a site certificate, the Council must find that:*

21
22 *(1) The site, taking into account mitigation, can be restored adequately to a*
23 *useful, non-hazardous condition following permanent cessation of*
24 *construction or operation of the facility.*

25
26 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of*
27 *credit in a form and amount satisfactory to the Council to restore the site to a*
28 *useful, non-hazardous condition.¹⁴⁰*

29
30 **III.G.1. Findings of Fact**

31
32 OAR 345-027-0375(2)(e) designates the Scope of Council’s Review for all amendments to the
33 site certificate. It states that for all requests for amendment, the amount of the bond or letter
34 of credit required under OAR 345-022-0050 is adequate.

35
36 *III.G.1.a Restoration of the Site Following Cessation of Construction or Operation*

37
38 OAR 345-022-0050(1) requires that the site, taking into account mitigation, can be restored
39 adequately to a useful, non-hazardous condition following permanent cessation of construction
40 or operation of the facility. Restoring the site to a useful, nonhazardous condition for the
41 transmission line route alternatives and roads proposed in RFA1 would involve the same

¹⁴⁰ OAR 345-022-0050, effective April 3, 2002.

1 activities as Council approved in the *Final Order on ASC*, therefore the Department provides a
2 summary of decommissioning activities for transmission lines and roads below.

- 3
- 4 • Transmission line restoration would involve removal of the transmission line,
5 including all support structures, conductors, overhead shield wires, and
6 communication sites. The foundations for each support structure would be removed
7 to a depth of three feet below grade within land zoned EFU and to a depth of one
8 foot below grade (depending on ground slope) in all other areas.¹⁴¹
- 9 • All structure locations and access roads would be restored to a useful, nonhazardous
10 condition that would be consistent with the site’s zone and suitable for uses
11 comparable to surrounding land uses.¹⁴² Following gravel removal at the locations of
12 tower pads and communication stations, these sites would be re-graded as
13 necessary (for restoration of natural contours) and then re-seeded.¹⁴³
- 14 • The majority of facility access roads would be primitive (non-graveled) overland
15 travel roads. Following construction of the primitive roads, vegetation may regrow
16 adjacent to and within the traveled roadway, and new or modified drainages may
17 develop depending on the construction and location of the roads. Re-grading or
18 reshaping primitive roads to match previous land contours would have the potential
19 to create a greater impact compared to leaving in place the contours that developed
20 during the service life of the transmission line. Therefore, restoration of primitive
21 overland travel roads would consist of only minimal re-grading, as well as reseeded
22 and scarifying the roadbed.
- 23 • Built-up all-weather roads, including all communication station roads, would be fully
24 restored. Following gravel removal, built-up all-weather roads would be re-graded as
25 necessary (for restoration of natural contours) and then re-seeded.¹⁴⁴

26

27 *III.G.1.b Amount of Bond or Letter of Credit under OAR 345-022-0050 is Adequate*

28

29 OAR 345-027-0375(2)(e) requires the Council to find that the amount of the bond or letter of
30 credit required under OAR 345-022-0050 is adequate, and OAR 345-022-0050(2), requires a
31 finding that the applicant (certificate holder) has a reasonable likelihood of obtaining a bond or
32 letter of credit in a form and amount satisfactory to the Council to restore the site to a useful,
33 non-hazardous condition.

34

¹⁴¹ Except within EFU zones, removal of concrete footings to a depth of one foot below grade is appropriate because it is more environmentally impactful to remove the concrete footings than it is to leave in place the portion of the footing below a one-foot depth. Increasing the removal depth from one foot to three feet would result in significantly more disturbance to the surrounding ground. Removing concrete footings to three feet below ground in EFU lands is appropriate because it allows sufficient clearance for farming equipment and installation of irrigation systems. B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 327.

¹⁴² B2HAPPDoc3-40 ASC 23_Exhibit W_Retirement_ASC 2018-09-28, Section 3.2.

¹⁴³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 331; B2HAPPDoc3-40 ASC 23_Exhibit W_Retirement_ASC 2018-09-28, Attachment W-1.

¹⁴⁴ B2HAPPDoc3-40 ASC 23_Exhibit W_Retirement_ASC 2018-09-28, Section 3.2, Section 3.4, and Attachment W-1.

1 The Council previously reviewed the applicant’s cost estimate and confirmed that the site
2 restoration tasks, unit costs, labor rates, and cost estimate assumptions constitute a reasonable
3 site restoration cost for the facility. This included an estimated number of days or hours to
4 perform a site restoration activity, and then an applied loaded crew rates from RSMeans
5 construction cost estimating data to determine the unit costs for the given activity, where
6 loaded crew rates applied to the applicant’s site restoration cost estimate include contractor
7 overhead charges, profit, and insurance costs.¹⁴⁵ Council previously found that \$140,779,000
8 million (rounded to nearest \$1,000 and in Q3 2016 dollars) was adequate to restore the site to
9 a useful non-hazardous condition.

10
11 The 8.8 miles of transmission line route alternatives and 45.9 miles of road additions and
12 alternatives are “additive,” so that certificate holder has more options and flexibility to
13 accommodate landowner preferences and final facility design needs. However, the final facility
14 design will ultimately select one approved route, approved alternative route, or routes in
15 proposed RFA1, therefore, the actual facility components installed (which would then need to
16 be removed upon facility retirement), would not be additive. If the certificate holder selected
17 the routes proposed in RFA1 instead of the routes approved in the *Final Order on ASC*, the total
18 increase would be 1.8 miles of transmission line and facility components. Certificate holder
19 indicates that this would be less than 0.1% change in the total length of the facility.¹⁴⁶

20
21 Included in the \$140,779,000 million (Q3 2016 dollars) is \$3,791,302 million in Concrete
22 Wrecking which includes transmission tower foundations as well as \$10,698,452 million for Site
23 Grading, which includes restoration of roads and transmission tower pad areas.¹⁴⁷ Included in
24 this estimate is that, for single circuit lattice towers, they would be placed or spanned
25 approximately 1,200 to 1,800 feet apart, so for every mile of transmission line there would be
26 approximately 2 to 4 transmission line towers, depending on topography and angles in the
27 route.¹⁴⁸ Therefore, if the certificate holder constructed and retired the routes proposed in
28 RFA1, there would be approximately 2 to 4 additional towers to remove and restore for the 1.8
29 additional miles of transmission line. Under Retirement and Financial Assurance Condition 4,
30 imposed consistent with Mandatory Condition OAR 345-025-0006(8), the certificate holder will
31 update the facility bonding based upon the construction schedule. And under sub (c)(i), the
32 certificate holder would adjust the \$140 million to the date of issuance of the bond or letter of
33 credit, and on a quarterly basis thereafter during the construction phase, which would be based
34 upon the progress of the construction of the facility (facility components installed) using the
35 unit costs and assumptions identified in the Final Order on the ASC, Attachment W-1.¹⁴⁹
36 Further, under sub (f) of the Retirement and Financial Assurance Condition 4 (applicable to

¹⁴⁵ Loaded crew rates include wages and benefits, per diem, equipment rates, contractor overheads, and profit. B2HAPPDoc3-40 ASC 23_Exhibit W_Retirement_ASC 2018-09-28, Section 3.4 and Attachment W-1.

¹⁴⁶ B2HAMD1 RFA1 2023-06-08. Table 7-1. Standards and Laws Relevant to Proposed Amendment.

¹⁴⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, Table RFA-1: Applicant’s Decommissioning and Site Restoration Cost Estimate.

¹⁴⁸ B2HAPPDoc3-3 ASC 02a_Exhibit B_Project Description_ASC 2018-09-28, Table B-13. Project Structures and Visible Feature Dimensions.

¹⁴⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 334-336

1 construction), the certificate holder may request an adjustment of the bond or letter of credit
2 amount based on final design configuration of the facility by applying the unit costs and
3 assumptions presented in the Final Order on the ASC Attachment W-1.

4
5 Additionally, Retirement and Financial Assurance Condition 5, imposed consistent with
6 Mandatory Condition OAR 345-025-0006(8), directs a schedule for the bond amount carried
7 during the operational life of the facility, which indicates that the certificate holder may request
8 an adjustment of the bond or letter of credit amount based on final design configuration of the
9 facility by applying the unit costs and assumptions presented in the Final Order on the ASC
10 Attachment W-1.¹⁵⁰

11
12 Retirement and Financial Assurance Condition 5 expressly indicates that the Council retains the
13 authority to require the certificate holder to submit a bond or letter of credit, in a timeframe
14 identified by Council, and in an amount equal to the estimated total decommissioning cost for
15 the facility (\$140,779,000 in 3rd Quarter 2016 dollars adjusted to present day value), or
16 another amount deemed by the Council to be satisfactory to decommission the facility and
17 restore the site to a useful, nonhazardous condition. Therefore, because the potential increase
18 in facility components that may need to be retired, if selected, associated with RFA1 is a
19 negligible portion for the facility as a whole and it's retirement cost estimate, and because
20 existing site certificate conditions require the certificate holder to update and adjust the bond or
21 letter of credit based upon final facility design before and during construction as well as during
22 facility operation, the Department recommends Council find that under OAR 345-027-
23 0375(2)(e), the amount of the bond or letter of credit required under OAR 345-022-0050 is
24 adequate.

25
26 Existing site certificate conditions that apply to the facility, with the site boundary additions
27 proposed in RFA1 include the following conditions which are also imposed under Mandatory
28 Conditions (OAR 345-025-0006):

- 29
- 30 • Retirement and Financial Assurance Condition 1 (GEN-RT-01): The certificate holder
31 must prevent the development of any conditions on the site that would preclude
32 restoration of the site to a useful, non-hazardous condition.
 - 33 • Retirement and Financial Assurance Condition 2 (RET-RT-01): The certificate holder
34 must retire the facility in accordance with a retirement plan approved by the
35 Council.
 - 36 • Retirement and Financial Assurance Condition 3 (RET-RT-02): If the Council finds that
37 the certificate holder has permanently ceased construction or operation of the
38 facility without retiring the facility according to a final retirement plan approved by
39 the Council, the Council must notify the certificate holder and request that the
40 certificate holder submit a proposal. If the certificate holder does not submit a
41 proposed final retirement plan by the specified date, the Council may direct the
42 Department to prepare a proposed final retirement plan for the Council's approval.

¹⁵⁰ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 336-339.

1
2 **III.G.2. Conclusions of Law**
3

4 Based on the foregoing analysis, and subject to compliance with the existing conditions
5 described above, the Department recommends the Council find that under OAR 345-027-
6 0375(2)(e), the amount of the bond or letter of credit required under OAR 345-022-0050 is
7 adequate.
8

9 **III.H. FISH AND WILDLIFE HABITAT: OAR 345-022-0060**
10

11 *To issue a site certificate, the Council must find that the design, construction*
12 *and operation of the facility, taking into account mitigation, are consistent*
13 *with:*
14

15 *(1) The general fish and wildlife habitat mitigation goals and standards of OAR*
16 *635-415-0025(1) through (6) in effect as of February 24, 2017, and*
17

18 *(2) For energy facilities that impact sage-grouse habitat, the sage-grouse*
19 *specific habitat mitigation requirements of the Greater Sage-Grouse*
20 *Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-*
21 *0000 through -0025 in effect as of February 24, 2017.¹⁵¹*
22

23 **III.H.1. Findings of Fact (OAR 345-022-0060(1))**
24

25 The analysis area for the Fish and Wildlife Habitat standard includes all areas within the
26 proposed RFA1 site boundary additions.¹⁵² Based on the acres included in the proposed RFA1
27 site boundary additions, the analysis area for this evaluation includes approximately 1,036 acres
28 extending across portions of Morrow, Umatilla, Union, Baker and Malheur counties.
29

30 *III.H.1.a Methodology*
31

32 The methodology used to inform potential habitat impacts from the proposed RFA1 site
33 boundary additions include 2022 literature review and field surveys. Literature reviewed
34 includes ODFW's current list of sensitive species; ODFW's mapped elk and mule deer winter
35 range;¹⁵³ Oregon Biodiversity Information Center database information as of February 2022;

¹⁵¹ OAR 345-022-0060, effective Mar. 8, 2017.

¹⁵² The Department established the site boundary as the analysis area for the Fish and Wildlife Habitat standard. Consistent with the analysis area established in the Second Amended Project Order, the same previously established analysis area applies to review of future proposed changes. B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26. Table 2, Page 23.

¹⁵³ ODFW Winter Range for Eastern Oregon. GIS dataset available online at:
<https://nrimp.dfw.state.or.us/DataClearinghouse/default.aspx?p=202&XMLname=885.xml>

1 USGS 2011 landcover data; 2022 GIS data from U.S. Forest Service and BLM; and 2021 fish
2 distribution data from StreamNet.

3
4 Various species, habitat and vegetation surveys were conducted in 2022. The type of surveys
5 and survey protocols were established in the ASC phase – the same surveys and protocols were
6 implemented and followed for RFA1. Surveys included: terrestrial visual encounter (TVES);
7 pygmy rabbit; Washington ground squirrel (WAGS); avian (for target species: great gray owl,
8 flammulated owl, northern goshawk and American three-toed woodpecker); and noxious
9 weeds. Due to limitation in the certificate holder’s ability to obtain landowner permission for
10 right-of-entry¹⁵⁴ in advance of biological survey seasons, not all biological surveys applicable to
11 the proposed RFA1 site boundary additions covered the entirety of the survey area. Survey
12 methods and results are provided in RFA1 Attachments 7-3, 7-4, 7-5 and 7-8. Key facts
13 regarding timing and survey area are presented below:

- 14
- 15 • TVES were conducted by biologists, during daylight hours, in late May through June
16 2022. The proposed RFA1 site boundary addition survey area for TVES includes 1,036
17 acres. Of 1,036 acres, 427 acres were surveyed. TVES recorded wildlife, wildlife signs
18 and unique wildlife habitat.¹⁵⁵
 - 19 • Pygmy rabbit surveys were conducted in March through April 2022, using methods
20 adapted from the Interagency Pygmy Rabbit Working Group’s “Surveying for Pygmy
21 Rabbits” and the United States Geological Survey’s “Pygmy Rabbit Surveys on State
22 Lands in Oregon.”¹⁵⁶ Suitable pygmy rabbit habitat within the proposed RFA1 site
23 boundary additions includes 29 acres. Of the 29 acres of suitable pygmy rabbit habitat,
24 29 acres were surveyed.
 - 25 • WAGS surveys were conducted in April and May 2022, in accordance with a protocol
26 previously reviewed and approved during the ASC permitting phase.¹⁵⁷ The survey area
27 included all suitable habitat area within and extending 1,000-feet from the proposed
28 RFA1 site boundary additions. Suitable habitat includes native grassland, shrub-steppe,
29 and planted native species in Conservation Recovery Program (CRP) habitat.¹⁵⁸ Suitable
30 WAGs habitat within the proposed RFA1 site boundary additions includes 69.4 acres. Of
31 the 69.4 acres of suitable WAGS habitat, 67.5 acres were surveyed.
 - 32 • Avian surveys were conducted in April, May and June using calling stations.¹⁵⁹ The survey
33 area for owls includes all areas within and extending ¼-mile of the proposed RFA1 site

¹⁵⁴ Right of entry refers to obtaining land owner permission for survey crews to access private property. The Council previously concurred with the certificate holder’s phased survey approach, where biological surveys were required where right of entry had been obtained. Where right of entry was either denied or not obtained, Council agreed to review desktop analysis combined with the results of preconstruction surveys. B2HAPPDoc32 Final Order on ASC and Attachments. Section III.D.

¹⁵⁵ B2HAMD1 Request for Amendment 1 Attachment 7-4 2023-06-08.

¹⁵⁶ B2HAMD1 Request for Amendment 1 Attachment 7-5 2023-06-08.

¹⁵⁷ B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru AttachP1-6 rev 2018-09-28. Appendix B-1, pgs. B1-1 – B1-2.

¹⁵⁸ B2HAMD1 Request for Amendment 1 Attachment 7-3 2023-06-08.

¹⁵⁹ B2HAMD1 Request for Amendment 1 Attachment 7-8 2023-06-08.

boundary additions. Within the owl survey area, calling stations are placed approximately 528 feet apart. The survey area for diurnal species (American Three-toed Woodpecker and Northern Goshawk) included all area within and extending ½-mile from the proposed RFA1 site boundary additions. Within the diurnal species survey area, calling stations were placed approximately 650 apart in areas with moderate to high conifer canopy cover within fairly contiguous stands of forest. For owl surveys, 46 calling stations are needed. Of the 46 calling stations, 18 were established for RFA1. For diurnal species, 52 callings stations are needed. Of the 52 calling stations, 25 were established for RFA1.

- Noxious weed surveys were conducted in 2022. The proposed RFA1 site boundary addition survey area for noxious weeds includes 1,036 acres. Of 1,036 acres, 209 acres were surveyed.

III.H.1.b Fish and Wildlife Habitat

The proposed RFA1 site boundary additions cover approximately 1,036 acres of habitat and agricultural lands. Habitat types include: shrubland, bare ground, forest/woodland, grassland, riparian vegetation, open water. Based on the six Habitat Category types established in ODFW’s Fish and Wildlife Habitat Mitigation Policy Habitat, habitat categories within the proposed RFA1 site boundary additions include Category 2, 3 and 6, with Category 6 habitat being agricultural lands¹⁶⁰, as presented in Table 18, *Habitat Categories and Types with Proposed RFA1 Site Boundary Additions*.¹⁶¹

Category 2 habitat includes ODFW-identified mule deer winter range, ODFW-identified elk winter range and areas of potential use of a state-listed Threatened and Endangered Species, WAGS.¹⁶²

Table 18: Habitat Categories and Types within Proposed RFA1 Site Boundary Additions

Proposed Change	Habitat Category					Total
	1	2	3	5	6	
Little Juniper Canyon Alternative						78.7

¹⁶⁰ ODFW’s Habitat Mitigation Policy for Category 6 habitat states that this habitat “has low potential to become essential or important habitat for fish and wildlife.” Impacts to Category 6 habitat do not require mitigation under the policy or Council’s standard. Category 6 habitat impacts are not further discussed in this section.

¹⁶¹ B2HAPPDoc3-25 ASC 16A_ Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6. In ASC Exhibit P, the applicant describes the metrics and habitat components the Applicant used to classify habitats into these six category types, based on the presence of habitat characteristics and species observations.

¹⁶² Results of 2022 WAGS survey, as presented in RFA1 Attachment 7-3, identified a WAGS colony outside of the proposed RFA1 site boundary, but within the 1,000-foot survey area. Areas of potential WAGS use are defined as areas adjacent to and within 4,921 feet (1.5 kilometers [km]) of WAGS Category 1 habitat, but not occupied by any squirrels either for burrowing or foraging, which is of similar habitat type and quality to the adjacent WAGS Category 1 habitat. This habitat is considered Category 2.

Table 18: Habitat Categories and Types within Proposed RFA1 Site Boundary Additions

Proposed Change	Habitat Category					Total
	1	2	3	5	6	
Agriculture / Developed	--	--	--	--	35.8	34.6
Shrubland	--	42.8	--	--	--	42.7
True Blue Gulch Alternative						422.8
Bare Ground	--	8.2	--	--	--	8.2
Forest / Woodland	--	116.6	--	--	--	116.6
Grassland	--	18.3	--	--	--	18.3
Riparian Vegetation	--	2.5	--	--	--	2.5
Shrubland	--	277.0	--	--	--	277.0
Durbin Quarry Alternative						130.0
Agriculture / Developed	--	--	--	--	1.4	1.4
Grassland	--	9.3	--	--	--	9.3
Shrubland	--	119.3	--	--	--	119.3
Access Road Changes						404.5
Agriculture / Developed	--	--	--	--	58.1	58.1
Bare Ground	--	10.5	0.6	--	--	11.1
Forest / Woodland	--	9.6	37.4	--	--	47.0
Grassland	--	70.6	1.7	--	--	72.3
Open Water	--	3.2	--	--	--	3.2
Riparian Vegetation	--	0.2	0.5	--	--	0.7
Shrubland	--	178.9	33.2	--	--	212.2
Proposed RFA1 Site Boundary Additions =						1,036

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III.H.1.c Habitat Impacts and Mitigation

Proposed RFA1 site boundary additions would result in temporary and permanent habitat impacts. Construction activities would result in approximately 170 acres of temporary impacts to Category 2, 3 and 5 habitats. Siting of facility infrastructure would result in approximately 51 acres of permanent impacts to Category 2, 3 and 5 habitats. Temporary and permanent habitat impacts are presented in Table 19, *Proposed RFA1 Site Boundary Additions – Temporary and Permanent Habitat Impacts* below.

Table 19: Proposed RFA1 Site Boundary Additions - Temporary and Permanent Habitat Impacts

Habitat Type	Habitat Category							
	2		3		5		6	
	Temp	Perm	Temp	Perm	Temp	Perm	Temp	Perm
Little Juniper Canyon Alternative								
Shrubland	4.7	1.4	1.9	0.2	--	--	7.4	0.9
Subtotal =	4.7	1.4	1.9	0.2	--	--	7.4	0.9
True Blue Gulch Alternative								
Forest / Woodland	0.6	0.0	--	--	--	--	--	--
Grassland	8.7	1.7	--	--	--	--	--	--
Riparian Vegetation	3.1	0.9	--	--	--	--	--	--
Shrubland	58.4	12.5	--	--	--	--	--	--
Subtotal =	70.8	15.1	--	--	--	--	--	--
Durbin Quarry Alternative								
Agriculture / Developed	--	--	--	--	--	--	0.5	--
Grassland	1.8	0.4	--	--	--	--	--	--
Shrubland	28.9	3.7	--	--	--	--	--	--
Subtotal =	30.7	4.1	--	--	--	--	0.5	--
Access Road Changes								
Agriculture / Developed	--	--	--	--	--	--	9.1	5.3
Bare Ground	2.0	0.9	0.1	0.1	--	--	--	--
Forest / Woodland	1.5	1.3	6.6	2.6	--	--	--	--
Grassland	12.6	6.6	0.2	0.2	--	--	--	--
Open Water	1.0	0.5	--	--	--	--	--	--
Riparian Vegetation	0.0	0.0	--	--	--	--	--	--
Shrubland	30.9	15.6	7.3	3.4	--	--	--	--
Subtotal =	47.9	24.9	14.2	6.2	--	--	9.1	5.3
Grand Total =	154.1	45.5	16.1	6.4	--	--	17.0	6.2
Total Permanent, Categories 2-5	51.9 acres							
Total Temporary, Categories 2-5	170.2 acres							

1
2 As presented above, proposed RFA1 site boundary additions would result in temporary and
3 permanent impacts to Category 2, 3 and 5 habitats. Under the Council’s Fish and Wildlife
4 Habitat standard, the Council must find that the design, construction and operation are
5 consistent with ODFW’s fish and wildlife habitat mitigation goals, based on category of habitat
6 impacted. The mitigation goals for Category 2, 3 and 5 habitats are presented below.

7
8 *"Habitat Category 2" is essential habitat for a fish or wildlife species, population, or*
9 *unique assemblage of species and is limited either on a physiographic province or site-*
10 *specific basis depending on the individual species, population or unique assemblage.*

1
2 If impacts are unavoidable, the mitigation goal for Category 2 habitat is no net loss of either
3 habitat quantity or quality and provision of a net benefit of habitat quantity or quality. The
4 Council interprets this to mean that both habitat quantity and quality must be preserved and
5 the quantity of habitat preserved must be more than is impacted and the quality of the habitat
6 of the preserved lands must be suitable for uplift or enhancement. To achieve this goal, impacts
7 must be avoided or unavoidable impacts must be mitigated through reliable “in-kind, in-
8 proximity” habitat mitigation to achieve no net loss of either pre-development habitat quantity
9 or quality. In addition, a net benefit of habitat quantity and quality must be provided.

10
11 *“Habitat Category 3” is essential habitat for fish and wildlife, or important habitat for*
12 *fish and wildlife that is limited either on a physiographic province or site-specific basis,*
13 *depending on the individual species or population.*

14
15 The mitigation goal for Category 3 habitat is no net loss of either habitat quantity or quality.
16 The Council interprets this to mean that both habitat quantity and quality must be preserved.
17 The goal is achieved by avoidance of impacts or by mitigation of unavoidable impacts through
18 reliable “in-kind, in-proximity” habitat mitigation to achieve no net loss in either pre-
19 development habitat quantity or quality.

20
21 To achieve the habitat mitigation goals for Category 2, 3 and 5 habitats, the certificate holder is
22 required to mitigate temporary and permanent habitat impacts. Temporary habitat impacts
23 would be restored based on the requirements of a Revegetation and Reclamation Plan; and
24 temporal and permanent habitat impacts would be restored through protection, conservation
25 and enhancement of habitat, based on the requirements of a Habitat Mitigation Plan.¹⁶³ The
26 Revegetation and Reclamation Plan and Habitat Mitigation Plan are in draft form, and require
27 finalization based on final facility design and updated biological survey data.

28
29 Council previously imposed Fish and Wildlife Condition 1 (Condition GEN-FW-01) requiring
30 actions be completed during preconstruction, construction and operation to ensure the
31 temporary habitat impacts can be restored, consistent with the standard.

32
33 Temporal and permanent habitat impacts would be restored based on the following:¹⁶⁴
34

¹⁶³ Temporary impacts to habitat requiring a longer restoration timeframe (+ five years) are considered temporal impacts and typically require additional mitigation beyond revegetation to account for the loss of habitat function and values from the time of impact to the time when the restored habitat provides a pre-impact level of habitat function.

¹⁶⁴ While temporal loss applies to habitat subtypes expected to require a longer restoration timeframe, and therefore would apply to impacted sagebrush steppe but not grasslands, the certificate holder did not delineate between habitat subtypes to be temporarily impacted and provides mitigation for temporal loss for Category 2, 3 and 4 regardless of habitat subtype. Therefore, temporary impacts are being mitigated comparable to permanent impacts.

- 1 • Category 2 impacts: more than 1 acre preserved for every 1 acre impacted (>1:1 acreage
- 2 ratio)
- 3 • Category 3 and 4 impacts: 1 acre preserved for every 1 acre impacted (1:1 acreage ratio)
- 4 • Category 5 impacts: less than 1 acre preserved for every 1 acre impacted (<1:1 acreage
- 5 ratio)
- 6

7 The habitat mitigation obligation for the proposed RFA1 site boundary additions from
8 approximately 170 acres¹⁶⁵ of temporal habitat impacts and 52 acres of permanent habitat
9 impacts equals approximately 222 acres.

10
11 The draft Fish and Wildlife Habitat Plan (HMP) was approved by Council in the *Final Order on*
12 *the ASC*; finalization and implementation of the HMP are required under Fish and Wildlife
13 Condition 4 (Condition GEN-FW-04). The amended draft HMP, as included in RFA1, is provided
14 in Attachment P1-6 of this order and addresses the changes in permanent impacts to habitat,
15 by habitat category and zone.

16
17 The amended draft HMP maintains the three previously approved options for habitat
18 mitigation: purchasing mitigation credits through an ODFW-approved mitigation bank;
19 purchasing credits through an In-Lieu Fee Program; or permittee responsible mitigation, where
20 certificate holder would secure lands with conservation easements for long-term protection
21 and enhancement. Compliance with Fish and Wildlife Condition 4 (Condition GEN-FW-04)
22 requires that, prior to construction, the certificate holder select the mitigation option and
23 demonstrate the either credits sufficient to mitigate for the habitat impacts associated with the
24 phase, segment, or facility as whole, prior to the impact, have been secured and purchased; or
25 that mitigation sites, approved by ODOE and ODFW, have been selected and secured with a
26 conservation easement or similar legal conveyance, that meet the location and enhancement
27 suitability requirements for the habitat categories impacted.

28
29 Council previously evaluated the suitability of 14 potential mitigation sites¹⁶⁶ in meeting the
30 mitigation goals for temporal and permanent habitat impacts. The 14 mitigation sites
31 collectively exceed the quantity of mitigation that would ultimately be needed for the facility,
32 with proposed RFA1 site boundary additions.

33

¹⁶⁵ As presented in this order, because the certificate holder proposes to mitigate the temporal loss of habitat for all temporary impacts to Category 2, 3 and 5 by including equivalent acres within the permanent lands secured for long-term habitat mitigation, the Department recommends Council amend Fish and Wildlife Habitat Condition 1 to allow reduced monitoring if temporary impacts are otherwise mitigated through revegetation and compensatory mitigation. The Department also recommends amending General Standard of Review Condition 9, consistent with the recommended amended Fish and Wildlife Habitat Condition 1, because monitoring/reporting under the Revegetation and Reclamation Plan is incorporated into the Noxious Weed Plan due to approved mitigation of temporary impacts treated as a permanent impact. Recommended deleted portion of condition to not conflict with overall reporting structures under the Revegetation and Reclamation Plan and Noxious Weed Plan.

¹⁶⁶ B2HAPPDoc32 Final Order on ASC 2022-09-27. Section IV.H.1, pg. 355.

1 *III.H.1.d Species Impacts and Mitigation*
2

3 Results of the 2022 biological surveys did not identify any pygmy rabbits, owl or diurnal species.
4 As described in Section III.H.1.a, surveys did not include all survey area. In addition, raptor nest
5 surveys were not conducted, but are necessary to identify raptor nests in advance of
6 construction to ensure adequate avoidance of species impacts during the sensitive nesting
7 seasons. Council previously imposed the following conditions that will require surveys in
8 unsurveyed areas to be completed prior to construction within suitable habitat.
9

- 10 • Fish and Wildlife Condition 15 (Condition PRE-FW-01) requires that, prior to
11 construction of the facility, facility phase or segment, as applicable, surveys be
12 conducted on any portion of the site boundary not previously surveyed for the
13 following: Northern Goshawk, American Three-Toed Woodpecker, Great Gray Owl,
14 TVES, wetlands and fish.
- 15 • Fish and Wildlife Condition 16 (Condition PRE-FW-02) requires that, prior to
16 construction of the facility, facility phase or segment, as applicable, surveys be
17 conducted on any portion of the site boundary not previously surveyed for the
18 following: WAGS, raptor nests, and pygmy rabbits.

19
20 Potential impacts to State Sensitive species during construction and operation include sensory
21 disturbance (i.e., noise, vibration, and visual) from the presence of personnel, vehicles, and
22 equipment; as well as permanent impacts from habitat loss/modification; collision with
23 equipment and facilities; increased predation risk from transmission lines used for perching, and
24 transmission line electrocution and collision. Council previously imposed the following
25 conditions which will rely on the results of the preconstruction survey data from the above-
26 referenced conditions and ensure avoidance to the greatest possible extent.
27

- 28 • Fish and Wildlife Condition 11 (Condition CON-FW-01) limits ground-disturbing activities
29 during the elk and mule deer winter range season.
- 30 • Fish and Wildlife Condition 12 (Condition CON-FW-02) requires a minimization and
31 avoidance plan in any locations identified during preconstruction surveys of pygmy
32 rabbits or State-sensitive bat species.
- 33 • Fish and Wildlife Condition 13 (Condition CON-FW-03) requires a minimization and
34 avoidance plan for any locations identified during preconstruction surveys of ground-
35 nesting bird species.
- 36 • Fish and Wildlife Condition 14 (Condition CON-FW-04) requires a 300-foot to ½-mile
37 avoidance buffer nearing the sensitive nesting season for occupied nests of raptors with
38 suitable habitat within the analysis area.

39
40 **III.H.2. Findings of Fact (OAR 345-022-0060(2))**
41

1 The EFSC Fish and Wildlife Habitat standard has two parts. Sub(1), as described in the section
2 above, relates to all fish and wildlife habitat except for sage-grouse habitat. Sub(2) of the
3 standard is specific to sage-grouse habitat, and states:

4
5 *To issue a site certificate, the Council must find that the design, construction, and operation*
6 *of the facility, taking into account mitigation, are consistent with:*

7 ***

8 *(2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat*
9 *mitigation requirements of the Greater sage-grouse conservation strategy for Oregon at*
10 *OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effects as of February 24,*
11 *2017.*

12
13 As referenced in the Council’s standard above, OAR 635-415-0025(7) states:

14
15 *For proposed developments subject to this rule with impacts to greater sage-grouse habitat*
16 *in Oregon, mitigation shall be addressed as described in OAR 635-140-0000 through 635-*
17 *140-0025, except that any energy facility that has submitted a preliminary application for*
18 *site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule is*
19 *exempt from fulfilling the avoidance test contained in 635-140-0025, Policy 2, subsections*
20 *(a), (b), (c) and (d)(A). Other mitigation provisions contained in 635-140-0025, Policy 2,*
21 *subsections (d)(B) and (e), and Policies 3 and 4 remain applicable.*

22
23 OAR 635-415-0025(7) became effective upon its adoption in March 2016. The pASC for the
24 proposed transmission line was submitted in February 2013. The Department interprets the
25 exception to OAR 635-415-0025(7) to specifically apply during the permitting phase of the ASC
26 – and allowed for projects that were in the pASC phase to be exempt from the requirement.
27 The waiver, however, does not extend to future permitting phases, where changes to facility
28 location and site boundary areas are proposed. Therefore, the requirements of OAR 635-140-
29 0025, Policy 2, subsections (a), (b), (c), and (d)(A) are applicable to the proposed RFA1 site
30 boundary additions that would occur within/impact sage-grouse habitat.¹⁶⁷

31
32 The applicable provisions of OAR 635-140-0025(2) and (3) state:

33
34 *(2) Policy 2. The Department [ODFW] may approve or recommend approval of mitigation*
35 *for impacts from a large-scale development permitted by a county; or development*
36 *actions permitted by a state or federal government entity on public land, within sage-*
37 *grouse habitat only after the following mitigation hierarchy has been addressed by the*
38 *permitting entity, with the intent of directing the development action away from the*

¹⁶⁷ OAR 345-027-0375(2)(a) requires that changes proposed in a Request for Amendment, specifically site boundary additions, to be reviewed under the standards, rules and laws, that would be applied to a new site certificate application submitted to the same date. The Department interprets OAR 635-415-0025(7) only to apply to the proceedings of an ASC because applying the -0025(7) exemption to future EFSC proceedings for an approved facility is not consistent with OAR 345-027-0375 and 345-022-0030.

1 most productive habitats and into the least productive areas for sage-grouse (in order of
2 importance: core area, low density, general, and non-habitat).

3
4 (a) *Avoidance in Core Area Habitat. If the proposed development can occur in
5 another location that avoids both direct and indirect impacts within core habitat,
6 then the proposal must not be allowed unless it can satisfy the following criteria:*

7 (A) *It is not technically feasible to locate the proposed development activity or its
8 impacts outside of a core habitat area based on accepted engineering
9 practices, regulatory standards or some combination thereof. Costs
10 associated with technical feasibility may be considered, but cost alone may
11 not be the only consideration in determining that the development must be
12 located such that it will have direct or indirect impacts on sage-grouse core
13 area habitat; or*

14 (B) *The proposed development is dependent on a unique geographic or other
15 physical feature(s) that cannot be found on other lands; and*

16 (C) *If the proposal is for a large-scale development as defined in Oregon Land
17 Conservation and Development OAR 660-023-0115 (Greater Sage-
18 Grouse) and either (2)(a)(A) or (2)(a)(B) is found to be satisfied, the
19 permitting entity must also find that it will provide important economic
20 opportunity, needed infrastructure or public safety benefits for local citizens
21 or the entire region.*

22
23 (b) *Avoidance in Low Density Habitat. If the proposed development action can occur
24 in another location that avoids both direct and indirect impacts within low
25 density sage-grouse habitat, then the proposal must not be allowed unless it can
26 satisfy the following criteria:*

27 (A) *It is not technically or financially feasible to locate the proposed use outside
28 of low density sage-grouse habitat based on accepted engineering practices,
29 regulatory standards, proximity to necessary infrastructure or some
30 combination thereof; or*

31 (B) *The proposed development action is dependent on geographic or other
32 physical feature(s) found in low density habitat areas that are less common at
33 other locations.*

34
35 (c) *Avoidance in General Habitat. If the proposed development activity and its direct
36 and indirect impacts are in general sage-grouse habitat (within 3.1 miles of a
37 lek), then the permitting entity may allow the activity based on satisfaction of the
38 following criteria:*

39 (A) *Consultation between the development proponent and the Department that
40 generates recommendations pursuant to the approach identified in
41 minimization subsection (d), and*

42 (B) *Incorporation by the project proponent of reasonable changes to the project
43 proposal based on the above consultation with the Department, and/or
44 justification as to why a given recommendation is not feasible.*

1
2 (d) *Minimization. If after exercising the above avoidance tests, the permitting entity*
3 *finds the proposed development action cannot be moved to non-habitat or into a*
4 *habitat category that avoids adverse direct and indirect impacts to a habitat*
5 *category of greater significance (i.e., core or low density), then the next step*
6 *applied in the mitigation hierarchy will be minimization of the direct and indirect*
7 *impacts of the proposed development action. Minimization consists of how to*
8 *best locate, construct, operate and time (both seasonally and diurnally) the*
9 *development action so as to avoid or minimize direct and indirect impacts on*
10 *important sage-grouse habitat and sage-grouse.*

11
12 (A) *Minimizing impacts from development actions in general habitat shall include*
13 *consultation between the development proponent and the Department that*
14 *considers and results in recommendations on how to best locate, construct,*
15 *or operate the development action so as to avoid or minimize direct and*
16 *indirect impacts on important sage-grouse habitat within the area of general*
17 *habitat.*

18
19 (e) *Compensatory Mitigation. If avoidance and minimization efforts have been*
20 *exhausted, compensatory mitigation to address both direct and indirect impacts*
21 *will be required as part of the permitting process for remaining adverse impacts*
22 *from the proposed development action to sage-grouse habitat, consistent with*
23 *the mitigation standard in (3) Policy 3 below.*

24
25 (3) *Policy 3. The standard for compensatory mitigation of direct and indirect habitat*
26 *impacts in sage-grouse habitat (core low density, and general areas) is to achieve net*
27 *conservation benefit for sage-grouse by replacing the lost functionality of the impacted*
28 *habitat to a level capable of supporting greater sage-grouse numbers than that of the*
29 *habitat which was impacted. Where mitigation actions occur in existing sage-grouse*
30 *habitat, the increased functionality must be in addition to any existing functionality of*
31 *the habitat to support sage-grouse. When developing and implementing mitigation*
32 *measures for impacts to core, low density, and general sage-grouse habitats, the project*
33 *developers shall:*

34
35 (a) *Work directly with the Department [ODFW] and permitting entity to obtain*
36 *approval to implement a mitigation plan or measures, at the responsibility of*
37 *the developer, for mitigating impacts consistent with the standard in OAR*
38 *635-140-0025 (3) or,*

39 (b) *Work with an entity approved by the Department [ODFW] to implement, at*
40 *the responsibility of the developer, "in-lieu fee" projects consistent with the*
41 *standard in OAR 635-140-0025 (3).*

42 (c) *Any mitigation undertaken pursuant to (a) or (b) above must have in place*
43 *measures to ensure the results of the mitigation activity will persist (barring*
44 *unintended natural events such as fire) for the life of the original impact. The*

1 Department will engage in mitigation discussions related to development
2 actions in a manner consistent with applicable timelines of permitting
3 entities.
4

5 (4) Policy 4. The Department shall follow the Fish and Wildlife Habitat Mitigation Policy
6 (OAR 635-415-0000) when defining habitat categories and providing recommendations
7 to address potential site-level impacts to species other than greater sage-grouse that
8 occur within sage-grouse core area habitat or sage-grouse low density habitat, except
9 that if there is a resulting conflict between OAR 635-415-0000 and this rule, then this
10 rule shall control.
11

12 OAR 635-140-0002 defines the sage grouse habitat categories as:

- 13 • Areas of High Population Richness: Mapped areas of breeding and nesting habitat within
14 core habitat that support the 75th percentile of breeding bird densities (i.e., the top
15 25%).
- 16 • Core Area: Mapped sagebrush types or other habitats that support greater sage-grouse
17 annual life history requirements that are encompassed by areas: a) of very high, high,
18 and moderate lek density strata; b) where low lek density strata overlap local
19 connectivity corridors; or c) where winter habitat use polygons overlap with either low
20 lek density strata, connectivity corridors, or occupied habitat.” Core area maps are
21 maintained by the Department.
- 22 • Low Density: Mapped sagebrush types or other habitats that support greater sage-
23 grouse that are encompassed by areas where: a) low lek density strata overlapped with
24 seasonal connectivity corridors; b) local corridors occur outside of all lek density strata; c)
25 low lek density strata occur outside of connectivity corridors; or d) seasonal connectivity
26 corridors occur outside of all lek density strata. Low density area maps are maintained
27 by the Department.
- 28 • General Habitat: Occupied (seasonal or year-round) sage-grouse habitat outside impact
29 core and low density habitats. As explained in Exhibit P2 of the ASC, the analysis area for
30 sage grouse includes the entire Site Boundary, which the ASC defines as “the perimeter
31 of the site of a proposed energy facility, its related or supporting facilities, all temporary
32 laydown and staging areas, and all corridors and micro-siting corridors proposed by the
33 applicant” (OAR 345-001-0010(54)).
34

35 ODFW’s Sage-Grouse Conservation Strategy focuses primarily on preserving the species’ habitat
36 and not on impacts to individual birds. As applicable to the proposed RFA1 site boundary
37 additions, OAR 635-140-0025(2), Policy 2 requires compliance with a mitigation hierarchy,
38 which is intended to “direct[] the development action away from the most productive habitats
39 and into the least productive areas for sage-grouse (in order of importance: core area, low
40 density, general, and non-habitat).” In areas where impacts cannot be avoided, Policy 2(d)
41 requires the impacts to be minimized. As described in the rule, “[m]inimization consists of how
42 to best locate, construct, operate and time (both seasonally and diurnally) the development
43 action so as to avoid or minimize direct and indirect impacts on important sage-grouse habitat

1 and sage-grouse.” Policy 3 requires compensatory mitigation in the event avoidance and
2 minimization efforts have been exhausted.

3
4 The proposed Durbin Quarry alternative would be located in Core Area and Low Density
5 habitat. Policy 2 criteria (a) – (d) are evaluated below.¹⁶⁸

6
7 The Department recommends Council find that Policy 2 criteria (a)(B) and (b)(B) (*the proposed
8 development is dependent on a unique or other physical feature(s) that cannot be found on
9 other lands*) is met for the proposed Durbin Quarry alternative, based on the following facts.

10
11 The proposed Durbin Quarry alternative is dependent on: (1) lands reasonably adjacent to the
12 approved transmission line route, while also (2) avoiding ODOT’s Durbin Quarry. ODOT’s Durbin
13 Quarry needs to be avoided due to the risks of drilling, blasting, crushing, and large equipment
14 operation at the quarry to transmission line safety. These two unique features result in siting in
15 facility components in a location where Core Area and Low Density habitat exists.

16
17 The Department recommends Council find that Policy 2 criteria (a)(C) (*..find that it will provide
18 important economic opportunity, needed infrastructure or public safety benefits for local
19 citizens or the entire region*) is met for the proposed Durbin Quarry alternative, based on the
20 following facts.

21
22 Facility construction would result in job creation and increased tax base; facility operation
23 would benefit the greater Pacific Northwest economy through increasing transmission capacity
24 to allow for it to provide services to wholesale customers (potential energy sellers). The facility
25 would provide transmission services to wholesale customers; increase transmission capacity
26 and subsequently increased incentives to build and operate additional energy facilities near
27 transmission substations.

28
29 The facility is a necessary part of the certificate holder’s resource management strategy and is
30 designed to support the certificate holder in its continuing efforts to promote energy efficiency
31 and demand response as an alternative to the construction of additional generation plants.
32 Additionally, the facility is important for renewable resource development in northeastern
33 Oregon such as wind and geothermal resources. The facility is expected to relieve congestion
34 on the existing 230-kV transmission system, which could facilitate transmission of renewable
35 energy.

36
37 The Department recommends Council find that Policy 2 criteria (d)(A) (*..how to best locate,
38 construct, or operate the development action so as to avoid or minimize direct and indirect
39 impacts on important sage-grouse habitat within the area of general habitat.*) is met for the
40 proposed Durbin Quarry alternative, based on the following facts.

41

¹⁶⁸ Policy 2 criteria (c) applies to general habitat; because the proposed RFA1 site boundary additions are located in Core and Low Density areas only, (c) is not evaluated in this order.

1 The *Final Order on ASC* approved the siting of facility components in Core and Low Density
2 habitat areas with greater impacts than would result from the proposed Durbin Quarry
3 alternative, but that permitting decision did not require an evaluation of Policy 2 criteria (d)(A)
4 because of the exemption under OAR 635-415-0025(7) for energy facilities that had submitted
5 a preliminary application prior to March 2016. ODFW and the Department recommend that
6 while the previously approved route did not have to evaluate Policy 2 criteria (d)(A), credit can
7 be taken for future alternative routes that would have a lessor impact. The Department
8 recommends Council find that the siting of the proposed Durbin Quarry alternative would
9 better avoid and minimize direct and indirect impacts to Core and Low density habitat,
10 compared to the approved route in this location.

11
12 Council previously imposed Fish and Wildlife Condition 17 (Condition PRE-FW-03), 18
13 (Condition CON-FW-05) and 19 (Condition OPR-FW-03) requiring that the certificate holder
14 finalize the calculation of direct and indirect sage-grouse habitat impacts, and based on that
15 calculation, finalize the Sage-Grouse Habitat Mitigation Plan. Given that the nature and extent
16 of the impacts within Core and Low-Density habitat from the proposed Durbin Quarry
17 alternative would be similar or less than the approved facility, the Department recommends
18 Council incorporate by reference and rely upon its findings in the Final Order on the ASC, and
19 continue to find that based on compliance with the previously imposed conditions, the
20 certificate holder would comply with OAR 345-022-0060(2).

21

22 **III.H.2. Conclusions of Law**

23

24 Based on the foregoing analysis, and subject to compliance with the existing and recommended
25 amended site certificate conditions, as presented in Attachment 1, the Department
26 recommends the Council find that the design, construction and operation of the proposed RFA1
27 site boundary additions are consistent with the mitigation goals and requirements of the
28 Oregon Department of Fish and Wildlife’s Fish and Wildlife Habitat Mitigation Policy under OAR
29 635-415-0025.

30

31 **III.I. THREATENED AND ENDANGERED SPECIES: OAR 345-022-0070**

32

33 *To issue a site certificate, the Council, after consultation with appropriate*
34 *state agencies, must find that:*

35

36 *(1) For plant species that the Oregon Department of Agriculture has listed as*
37 *threatened or endangered under ORS 564.105(2), the design, construction and*
38 *operation of the proposed facility, taking into account mitigation:*

39

40 *(a) Are consistent with the protection and conservation program, if any, that*
41 *the Oregon Department of Agriculture has adopted under ORS 564.105(3); or*
42

1 (b) If the Oregon Department of Agriculture has not adopted a protection and
2 conservation program, are not likely to cause a significant reduction in the
3 likelihood of survival or recovery of the species; and
4

5 (2) For wildlife species that the Oregon Fish and Wildlife Commission has listed
6 as threatened or endangered under ORS 496.172(2), the design, construction
7 and operation of the proposed facility, taking into account mitigation, are not
8 likely to cause a significant reduction in the likelihood of survival or recovery of
9 the species.¹⁶⁹
10

11 The Council's T&E standard does not implement federal requirements. There is not a Council
12 standard authorizing Council to impose or enforce regulations related to federally listed T&E
13 species listed under 16 USC Section 1533.
14

15 III.I.1. Findings of Fact 16

17 The analysis area for threatened or endangered plant and wildlife species was established in
18 the second amended project order as the area within and extending ½-mile from the site
19 boundary. For RFA1, the analysis area is the area within and extending ½-mile from the
20 proposed site boundary additions.
21

22 The methodology used to inform potential impacts to state-listed T&E species from proposed
23 RFA1 changes includes 2022 literature review and field surveys. Literature reviewed includes
24 ODFW's current list of sensitive species; Oregon Biodiversity Information Center database
25 information as of February 2022; ODA's current list of Threatened, Endangered and Candidate
26 Species list; 2022 GIS data from U.S. Forest Service and BLM; and 2021 fish distribution data
27 from StreamNet.
28

29 T&E species with the potential to occur in the analysis area include Washington ground squirrel
30 (WAGS), Snake River Chinook Salmon (Spring/Summer); Lawrence's milkvetch; Mulford's
31 milkvetch; Smooth mentzelia; Cronquist's stickseed; Oregon semaphore grass; Snake River
32 goldenweed; and Howell's spectacular thelypody.
33

34 WAGS surveys were conducted April 4-11 and 19-27 and May 5-12 and 20-28, 2022 and
35 included the area within a 1,000-foot buffer of suitable habitat.¹⁷⁰ Field surveys methods and
36 data recordation are described in RFA1 Attachment 7-3, Sections 2.3 and 2.4. The proposed
37 RFA1 site boundary additions include approximately 48 acres of suitable WAGS habitat in the
38 Little Juniper Canyon alternative (Morrow County). This area was fully surveyed and identified 1
39 WAGS colony.

¹⁶⁹ OAR 345-022-0070, effective May 15, 2007.

¹⁷⁰ WAGS surveys were conducted for RFA1 and preconstruction compliance. Therefore, the survey report in RFA1 Attachment 7-3, presents results applicable to previously approved area and proposed RFA1 site boundary additions.

1 T&E plant surveys were conducted at the Little Juniper Canyon Alternative and Durbin Quarry
2 alternative. Several areas of suitable habitat were not surveyed due to the lack of right of entry
3 concurrent with timing constraints of survey season. Council previously imposed Fish and Wildlife
4 Condition 16 (Condition PRE-FW-02) requiring that the certificate holder complete surveys within
5 previously unsurveyed areas, where facility-related temporary and permanent impacts would
6 occur, for state-listed T&E plant species. This condition applies to any unsurveyed areas with
7 suitable T&E plant habitat within the proposed RFA1 site boundary additions.

8
9 *III.I.1.a State listed Species*

10
11 One WAGS colony was found within the ½-mile analysis area (the Little Juniper Canyon
12 Alternative in Morrow County). WAGS are a state-listed endangered species.

13
14 The colony is located more than 785 feet from the proposed RFA1 site boundary additions. No
15 direct or indirect impact to WAGS or WAGS habitat would occur. Council previously imposed
16 T&E Species Condition 1 (Condition CON-TE-01) which precludes any ground-disturbing
17 activities during construction to occur within WAGS-habitat.

18
19 One population of Snake River goldenweed was found within the proposed RFA1 site boundary
20 additions (the Durbin Quarry alternative). This population is located within and expands beyond
21 a planned pulling and tensioning area. Council previously imposed T&E Species Condition 2
22 (Condition CON-TE-02) which precludes any ground-disturbing activities during construction
23 from occurring within 33-feet of T&E plant species; or requires that protective matting be
24 placed over the T&E plants if direct impacts are unavoidable.

25
26 Council previously established that the circumstances that would warrant placement of matting
27 over T&E plant populations, versus avoidance, are those that apply to existing roads
28 necessitating substantial modification to support construction or operation or such similar
29 circumstances. In other words, Council allowed an exception to strict avoidance if the impact
30 would occur in an area where the certificate holder is using existing roads, but substantially
31 modifying the road for use during construction. A pulling and tensioning site does not rely on
32 existing infrastructure – and there are areas in close proximity to the mapped T&E plant species
33 where populations were not identified during 2022 surveys. Therefore, the 33-foot buffer and
34 impact avoidance is required.

35
36 *III.I.1.b Potential Impacts to Identified Threatened and Endangered Species*

37
38 Construction could impact WAGS through direct and indirect mortality, and through both
39 temporary and permanent habitat impacts. Habitat impacts are evaluated in Section III.H.1. *Fish
40 and Wildlife Habitat*. Direct mortality impacts could occur through vehicular incident; indirect
41 mortality could occur if the transmission line, once operational, is used as perching habitat by
42 raptors and ravens, which are known to predate on WAGS and other small mammals.

1 *III.I.1.c Mitigation of Potential Impacts*

2
3 Council previously imposed the following condition to reduce and minimize any potential direct
4 and indirect impacts to the state-listed T&E species described in this section:

- 5
6 • T&E Species Condition 1 (Condition CON-TE-01) requires that the certificate holder
7 ensure that construction-related ground-disturbing activities avoid all WAGS habitat
8 identified during pre-construction surveys. The condition also requires that if any WAGS
9 are identified during the 3-year validity period of the surveys within areas of anticipated
10 ground-disturbance, but after construction has commenced, that the certificate holder
11 develop and avoidance and impact minimization plan.
- 12 • Fish and Wildlife Condition 8 (Condition GEN-FW-07) requires that the certificate holder
13 employ an onsite speed limit on private facility access roads of 25 miles per hour.
14 Reduced speed will minimize impacts to WAGS through vehicular collision.
- 15 • Fish and Wildlife Condition 16 (Condition PRE-FW-02) requires that the certificate holder
16 complete surveys within previously unsurveyed areas, where facility-related temporary
17 and permanent impacts would occur, for state-listed T&E plant species. This condition
18 applies to any unsurveyed areas with suitable T&E plant habitat within the proposed RFA1
19 site boundary additions.
- 20 • T&E Species Condition 2 (Condition CON-TE-02) precludes any ground-disturbing
21 activities during construction from occurring within 33-feet of T&E plant species, as
22 identified during preconstruction surveys; or requires that protective matting be placed
23 over the T&E plants if direct impacts are unavoidable.

24
25 **III.I.2. Conclusions of Law**

26
27 Based on the foregoing analysis, and subject to compliance with the existing site certificate
28 conditions described above, the Department recommends the Council find that the design,
29 construction and operation of the proposed RFA1 site boundary additions are not likely to
30 cause a significant reduction in the likelihood of survival or recovery of species listed as
31 threatened or endangered by the Oregon Department of Agriculture or Oregon Fish and
32 Wildlife Commission.

33
34 **III.J. SCENIC RESOURCES: OAR 345-022-0080**

35
36 *(1) To issue a site certificate, the Council must find that the design,*
37 *construction and operation of the facility, taking into account mitigation, are*
38 *not likely to result in significant adverse visual impacts to significant or*
39 *important scenic resources.*

40
41 *(2) The Council may issue a site certificate for a special criteria facility under*
42 *OAR 345-015-0310 without making the findings described in section (1). In*
43 *issuing such a site certificate, the Council may impose conditions of approval*

1 to minimize the potential significant adverse visual impacts from the design,
2 construction, and operation of the facility on significant or important scenic
3 resources.

4
5 (3) A scenic resource is considered to be significant or important if it is
6 identified as significant or important in a current land use management plan
7 adopted by one or more local, tribal, state, regional, or federal government or
8 agency.

9
10 (4) The Council shall apply the version of this rule adopted under
11 Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the
12 review of any Application for Site Certificate or Request for Amendment that
13 was determined to be complete under OAR 345-015-0190 or 345-027-0363
14 before the effective date of this rule. Nothing in this section waives the
15 obligations of the certificate holder and Council to abide by local ordinances,
16 state law, and other rules of the Council for the construction and operation of
17 energy facilities in effect on the date the site certificate or amended site
18 certificate is executed.¹⁷¹

19
20 **III.J.1. Findings of Fact**

21
22 OAR 345-022-0080 requires the Council to determine that the design, construction and
23 operation of the site boundary additions proposed in RFA1, taking into account mitigation, will
24 not be likely to have a “significant adverse impact” to any significant or important scenic
25 resources and values in the analysis area. In applying the standard set forth in OAR 345-022-
26 0080(1), the Council assesses the visual impacts of facility structures on significant or important
27 scenic resources described in “local land use plans, tribal land management plans and federal
28 land management plans for any lands located within the analysis area described in the second
29 amended project order.” For purposes of this rule, “local land use plans” includes applicable
30 state management plans. The analysis area is the site boundary and 10 miles from the site
31 boundary.

32
33 In preparation of RFA1, certificate holder reviewed the 47 applicable federal and local land use
34 management plans or development codes within the 10-mile analysis area of the facility
35 approved in the *Final Order on ASC* to determine if there had been updates to these plans that
36 may identify new scenic resources. Based on this review of applicable land use plans,¹⁷² 23 of
37 the 47 plans or codes have been updated or replaced by a new plan since the ASC.¹⁷³ The review

¹⁷¹ OAR 345-022-0080, effective December 19, 2022.

¹⁷² Excerpts of plans provided in RFA1 Attachment 7-11.

¹⁷³ Baker County 2016, Benton County 2022, City of Hermiston 2014, City of Baker 2020, City of Island City 2022, City of Lone 2009, City of Irrigon 2014, 2017, City of La Grande 2013, City of Pendleton 2022, City of Stanfield 2017, City of Umatilla 2013, City of Vale 2014, CTUIR 2018, Morrow County 2017, 2019, ODFW 2017, 2018, 2022, OPRD 2019, Umatilla County 2022, Union County 2021, Washington County 2020.

1 of these plan updates did not identify any new significant or important scenic resources and
 2 values.¹⁷⁴ Certificate holder also reviewed the Canyon County, Idaho, 2020 Comprehensive Plan
 3 (2011) which is within the analysis area of the site boundary additions proposed in RFA1, which
 4 has the Canyon County Scenic Byway Overlay, yet no scenic resources identified.

5

6 *III.J.1.a Significant or Important Scenic Resources Identified in Plans*

Final Order on ASC provides a description of each of the plans that contain scenic resources or values which included:

- County Plans: Union and Baker Counties;
- City Plans: City of Pendleton;
- 7 • State Plans: Oregon State Park System/Oregon Parks and Recreation Department, State
 8 Wildlife Areas, State Scenic Byways;
- 9 • Federal Plans:
 - 10 ○ Bureau of Land Management (BLM) - Vale District, Baker Resource Area; BLM
 11 Baker RMP, Vale District, Malheur Resource Area; BLM SEORMP, Boise District,
 12 Owyhee Resource Area (Owyhee Resource Management Plan), Boise District,
 13 Cascade Resource Area (Cascade RMP), Spokane District (Spokane RMP);
 - 14 ○ U.S. Forest Service (USFS) - Wallowa-Whitman National Forest Land and
 15 Resource Management Plan, Umatilla National Forest Land and Resource
 16 Management Plan;
 - 17 ○ Department of Defense/US Navy
 - 18 ○ Bureau of Reclamation (BOR)
 - 19 ○ U.S. Fish and Wildlife Service (USFWS) - Umatilla National Wildlife Refuge
 20 (NWR), McKay Creek National Wildlife Refuge (NWR), Deer Flat National Wildlife
 21 Refuge (NWR)

Based on the review of these plans and updates to the plans, there are not any new scenic resources of values within the analysis area of RFA1, however, Table 20: *Scenic Resources within Analysis Area for ASC and RFA1*, below, lists the scenic resources in the analysis area for the ASC and RFA1, with the distance to the closest transmission line route associated with the ASC and RFA1.

Table 20: Scenic Resources within Analysis Area for ASC and RFA1

Scenic Resource	Distance to Approved/Proposed Routes	Designating Plan
Blue Mountain Forest Wayside (SR U1)	Crossed (ASC)	Union County Comprehensive Plan and Oregon Parks and Recreation Department
OR Highway 203 (SR B1)	3.3 miles (ASC)	Baker County Comprehensive Plan

¹⁷⁴ B2HAMD1 RFA1 2023-06-08. Section 7.1.7.

Table 20: Scenic Resources within Analysis Area for ASC and RFA1

Scenic Resource	Distance to Approved/Proposed Routes	Designating Plan
OR Highway 86 (SR B2)	Crossed (ASC)	Baker County Comprehensive Plan
OR Highway 245 (SR B3)	7 miles (ASC)	Baker County Comprehensive Plan
Interstate 84, Pleasant Valley Durkee area (SR B4)	Crossed (ASC)	Baker County Comprehensive Plan
Interstate 84, Huntington to Baker/Malheur County line (SR B5)	0.2 miles (ASC) 0.1 miles (RFA1 Durbin Quarry)	Baker County Comprehensive Plan
Hells Canyon Scenic Byway	Crossed (ASC)	ODOT Hells Canyon Scenic Byway Management Plan
Grande Tour Route	0.2 miles (ASC)	ODOT Grande Tour Route Management Plan
Powder River Canyon – Keating (VRM B2)	5.7 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Burnt River Canyon (VRM B3)	Crossed (ASC) Crossed (RFA1 True Blue Gulch)	BLM – Vale District, Baker Resource Area Management Plan
Brownlee Reservoir West (VRM B7)	2.1 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Blue Mountain Parcel (SR B6)	0.9 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – NHOTIC Parcel (SR B6)	0.02 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – White Swan Parcel (SR B6)	2.9 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Straw Ranch 2 Parcel (SR B6)	1.1 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Straw Ranch 1 Parcel (SR B6)	0.1 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Powell Creek Parcel (SR B6)	1.2 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Powder River Canyon ACEC and WSR (SR B7)	1.4 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Birch Creek parcel (VRM M1)	0.2 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan

Table 20: Scenic Resources within Analysis Area for ASC and RFA1

Scenic Resource	Distance to Approved/Proposed Routes	Designating Plan
Oregon Trail ACEC – Tub Mountain Parcel (VRM M2)	0.5 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Sugarloaf Butte (VRM M3)	1.6 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Five Points Creek (WSR1)	2.0 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Lower Owyhee River (VRM M5)	Crossed (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Succor Creek (VRM M8)	3.9 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Jump Creek Canyon and Jump Creek ACEC (VRM O1)	4.9 miles (in State of Oregon) (ASC)	BLM, Owyhee Resource Area Management Plan
Brownlee Reservoir Southeast (VRM C1)	0.6 miles (ASC)	BLM, Boise District, Cascade Resource Area Management Plan
Brownlee Reservoir Northeast (VRM C2)	6.0 miles (ASC)	BLM, Boise District, Cascade Resource Area Management Plan
VQO 1	Adjacent (ASC)	USFW Wallowa Whitman National Forest Management Plan
VQO 2	Crossed (ASC)	USFW Wallowa Whitman National Forest Management Plan
OR 244 Corridor – Red Bridge West (VQO 3)	4.4 miles (ASC)	USFW Wallowa Whitman National Forest Management Plan
OR 244 Corridor – Red Bridge East (VQO 4)	1.4 miles (ASC)	USFW Wallowa Whitman National Forest Management Plan
Mt Emily (VQO 6)	5.2 miles (ASC)	USFW Wallowa Whitman National Forest Management Plan
OR 203 Corridor – Catherine Creek (VQO 8)	8.0 miles (ASC)	USFW Wallowa Whitman National Forest Management Plan

1
2 *III.J.1.b Visual Impact Assessment and Conclusions for Proposed RFA1 Site Boundary Additions*
3

4 III.J.1.b.1 Summary Methodology for Evaluation of Scenic Resources

5
6 As discussed, and summarized in Section III.F., *Protected Areas*, of this order, to evaluate the
7 impact of the proposed site boundary additions on protected areas, scenic, and recreational

1 resources, the certificate holder used the Council approved visual impact methodology which is
2 based on the BLM and USFS visual impact assessment methods, and the Council’s definition of
3 significant. Council’s rules do not require, or provide, a specific methodology for evaluating
4 visual impacts to Scenic Resources (or Protected Areas or Recreation resources).¹⁷⁵ Also, as
5 discussed in Section III.F., *Protected Areas*, of this order, the visual impact assessment extends 5
6 miles from the proposed site boundary additions in non-forested settings, and 10 miles in
7 forested settings. Beyond those distances, Council previously found that visibility of the facility
8 components would be negligible.¹⁷⁶ Because the vast majority of site boundary additions in
9 RFA1 are roads, which do not have a vertical visual component associated with them, the visual
10 impact assessment was further defined by proximity, i.e., foreground (<0.5 miles),
11 middleground (0.5 to 5 miles), or background distances (> 5 miles).

12
13 *Final Order on ASC* described in detail each scenic resource identified as significant or important
14 in an applicable management plan. Because there are not new scenic resources in the analysis
15 area for RFA1, Department recommends Council rely upon the descriptions and identification
16 of scenic resources provided in the ASC and *Final Order on ASC*.

17
18 III.J.1.b.1 Potential Impacts to Scenic Resources from Proposed Site Boundary Additions in RFA1

19
20 RFA1 Attachment 7-10, Table 2 provides an updated visual impact assessment of the site
21 boundary additions proposed in RFA1. Attachment 7-10, Table 2 includes the type of site
22 boundary additions (transmission line route or road), its proximity to the scenic resource, as
23 well as baseline characteristics, impact assessment, and significance determinations. RFA1
24 Figure 7-16 illustrates the location of scenic resources as well as the proximity to access road
25 and transmission line alternatives proposed in RFA1. Certificate holder indicates that the
26 distance from the proposed site boundary additions in RFA1 from scenic resources increased or
27 remained the same compared to the evaluation done for the ASC, thus potential visual impacts
28 would be less than or equal to what was previously approved.¹⁷⁷ Two scenic resources were
29 identified within the analysis area from a proposed transmission line route alternative in RFA1;
30 Interstate 84, Huntington to Baker/Malheur County line and Burnt River Canyon.

31
32 Interstate 84, Huntington to Baker/Malheur County line (SR B5 - Baker County Comprehensive
33 Plan) would be 0.1 miles from the proposed Durbin Quarry alternative, compared to 0.2 miles
34 evaluated in the ASC. The location of the proposed alternative is within the same landscape and
35 similar location as the previously approved route, therefore, the potential visual impact
36 assessment is similar to that Council previously approved. Council previously found that the

¹⁷⁵ Excerpt from Oregon Supreme Court Decision for the facility regarding methodologies for visual impact assessments, “... nothing in the rule required Idaho Power to utilize a particular methodology or specifically account for subjective perceptions and reactions in assessing whether the transmission line would be likely to result in “significant adverse visual impacts” to scenic resources. B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept. of Energy 2023-03-09, page 811. Visual impact assessment methodology, described in ASC Exhibit L, Attachment L-3, approved by Council in the final order on ASC.

¹⁷⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 305.

¹⁷⁷ B2HAMD1 RFA1 2023-06-08. Section 7.1.7.

1 facility would cause an impact to the scenic quality of the designated scenic portion of the
2 interstate freeway. Transmission towers would introduce a high level of contrast due to their
3 proximity, size and color, and would appear dominant in the landscape, and access roads would
4 be located as close as 0.1 mile from I-84. However, this area’s baseline characteristics are
5 agricultural-consistent with existing developments, including I-84, transmission line corridors
6 and agricultural settings. In this area, the approved facility and proposed route additions in
7 RFA1 would pass in and out of a designated BLM utility corridor and would be located within
8 portions of existing utility right of ways. Finally, the area around this region is Greater sage
9 grouse habitat and so the facility has been located near I-84 to minimize impacts to habitat.¹⁷⁸

10
11 The True Blue Gulch alternative proposed in RFA1 would cross the Burnt River Canyon (VRM B3
12 - BLM – Vale District, Baker Resource Area Management Plan), similar to the approved route in
13 the ASC, which would also cross the scenic resource. Views will continue to be limited in
14 duration and episodic, primarily experienced from a moving vehicle. Towers that are visible
15 within the scenic resource as a result of the True Blue Gulch Transmission Line Alternative will
16 add moderate visual contrast (within central/western portion of the area) to what was
17 previously approved for the ASC, therefore, the comprehensive visual impacts are anticipated
18 to remain medium intensity and less than significant as a result of RFA 1.¹⁷⁹ Views of the
19 proposed alternative would be most visible where it crosses Burnt River Canyon Road, the
20 primary viewing platform in the area. The towers would be visible on the ridgeline of the
21 canyon. Temporary work areas and access roads may be visible from high elevation areas
22 throughout the area. Council previously found that the BLM authorized the facility to cross
23 BLM-owned land in this area, and specifically changed its own management plan for visual
24 resources from VRM Class II to VRM Class IV which means that activities may modify the
25 landscape and changes can be high, the Council also previously found that the facility would not
26 cause a significant adverse impact to the scenic resources and values of the specific area within
27 the Burnt River Canyon Class IV managed area.

28
29 Previously imposed Scenic Resource Condition 1 (GEN-SR-01) would continue to apply to the
30 site boundary alternative routes proposed in RFA1 and ensures that the certificate holder shall
31 use dull-galvanized steel for lattice towers and non-specular conductors. All other previously
32 imposed Scenic Resource conditions specially applied to a certain portion or route of the
33 previously approved facility and does not apply to the site boundary additions proposed in
34 RFA1.

35 36 **III.J.2. Conclusions of Law**

37
38 Based on the foregoing analysis, and subject to compliance with the existing site certificate
39 conditions described above, the Department recommends Council find that the design,
40 construction and operation of facility components within the proposed RFA1 site boundary

¹⁷⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 441-442; and B2HAMD1 RFA1 2023-06-08, Attachment 7-10, Table 2, page 8.

¹⁷⁹ B2HAMD1 RFA1 2023-06-08. Attachment 7-15,

1 additions are not likely to result in significant adverse visual impacts to significant or important
2 scenic resources.

3
4 **III.K. HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES: OAR 345-022-0090**

5
6 *(1) Except for facilities described in sections (2) and (3), to issue a site*
7 *certificate, the Council must find that the construction and operation of the*
8 *facility, taking into account mitigation, are not likely to result in significant*
9 *adverse impacts to:*

10
11 *(a) Historic, cultural or archaeological resources that have been listed on, or*
12 *would likely be listed on the National Register of Historic Places;*

13
14 *(b) For a facility on private land, archaeological objects, as defined in ORS*
15 *358.905(1)(a), or archaeological sites, as defined in 358.905(1)(c); and*

16
17 *(c) For a facility on public land, archaeological sites, as defined in ORS*
18 *358.905(1)(c).*

19
20 *(2) The Council may issue a site certificate for a facility that would produce*
21 *power from wind, solar or geothermal energy without making the findings*
22 *described in section (1). However, the Council may apply the requirements of*
23 *section (1) to impose conditions on a site certificate issued for such a facility.*

24
25 *(3) The Council may issue a site certificate for a special criteria facility under*
26 *OAR 345-015-0310 without making the findings described in section (1).*
27 *However, the Council may apply the requirements of section (1) to impose*
28 *conditions on a site certificate issued for such a facility.¹⁸⁰*

29
30 **III.K.1. Findings of Fact**

31
32 Section (1) of the Historic, Cultural and Archaeological Resources standard requires the Council
33 to find that the facility, taking into account mitigation, is not likely to result in significant
34 adverse impacts to identified historic, cultural, or archaeological resources. Mitigation means
35 one or more of the following, in order of priority: avoidance; minimization; partial or complete
36 restoration of affected resource; preservation and maintenance; partial or complete
37 compensation for replacement or comparable substitute for the resource; or implementing
38 other measures as approved by Council.
39

¹⁸⁰ OAR 345-022-0090, effective May 15, 2007, amended by minor correction filed on July 31, 2019.

1 *III.K.1.a Aligning EFSC and Section 106 Review:*¹⁸¹ *ORS 469.370(13)*
2

3 *Final Order on ASC Section IV.K., Historic, Cultural, and Archaeological Resources*, explains how
4 Council approved its review to align with the Section 106 review process led by the BLM and as
5 part of the federal NEPA review, summarized as follows. Under ORS 469.370(13), for facilities
6 that are subject to review by a federal agency under the National Environmental Policy Act
7 (NEPA), such as the approved facility, the Council shall conduct its site certificate review, to the
8 maximum extent feasible, in a manner that is consistent with and does not duplicate the
9 federal agency review. This coordination shall include the elimination of duplicative application
10 materials, study and reporting requirements; and the Council use of information generated and
11 documents prepared for the federal agency review. The NEPA review addresses, among other
12 things, cultural, historic, and archaeological impacts from a facility and compliance with Section
13 106 of the National Historic Preservation Act (NHPA). Under 36 CFR 800.4(c)(1) and as part of
14 the Section 106 process, the BLM is responsible for final eligibility determinations for listing on
15 the National Register of Historic Places (NRHP), to which Council’s standard relies upon. As part
16 of the Section 106 compliance, the BLM issues determinations of eligibility for eligible resources
17 or determines that a resource is not eligible for listing on the NRHP. Pending the BLM’s final
18 determinations, cultural resources may remain with the designation of “unevaluated” if there
19 are no potential impacts from a facility. A resource designation of unevaluated indicates that
20 the resource may have been investigated, however, additional investigations or evaluations are
21 recommended so the resource is assumed to be likely eligible for listing on the NRHP. Council
22 previously approved designating resources that may need further evaluation from the Section
23 106 review as “unevaluated” which treats the resource as likely eligible for listing on the NRHP
24 and the impact analysis and mitigation (if any) is evaluated based on that designation.
25

26 Part of the Section 106 process requires a Programmatic Agreement (PA), which is the binding
27 document to the signatory parties that outlines the process for identification and evaluation of
28 historic and cultural properties, eligibility determinations of specific impacts on historic
29 properties, and measures to avoid, minimize, or mitigate any adverse impacts from a facility.
30 The PA allows for the final determinations of the potential impacts from a facility to historic and
31 cultural properties (including NRHP-listed, -eligible, and unevaluated resources) and for the
32 mitigation of adverse impacts that are outlined in the Historic Properties Management Plan
33 (HPMP). A HPMP required by the PA will be submitted to the BLM and will be reviewed by all
34 PA parties, it is anticipated to be specific to compliance with Section 106 of the National
35 Historic Preservation Act.¹⁸² Council previously approved Historic, Cultural, and Archaeological
36 Resources Condition 2, discussed further below, which reflects Council’s commitment to
37 conduct its review, including its review of the proposed site boundary additions in RFA1,
38 consistent with ORS 469.370(13) to the maximum extent feasible, in a manner that is consistent

¹⁸¹ Section applicable to OAR 345-022-0090(1)(a): “(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places”***

¹⁸² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 467-469.

1 with and does not duplicate the federal agency review.¹⁸³ And because OAR 345-022-0090(a)
2 relies upon NRHP eligibility, Council previously found that it could rely on the determinations
3 resulting from the Section 106 review and that the final determinations and mitigation may be
4 provided prior to construction of a phase or segment of the facility.¹⁸⁴
5

6 *III.K.1.b Survey Methods, Results, and Impact Assessment for RFA1* 7

8 In preparation of RFA1, certificate holder evaluated and surveyed for cultural, historical, and
9 archaeological resources with similar methods as was done for the ASC. Record searches were
10 done to identify previously recorded archaeological and historic sites for all site boundary
11 additions proposed in RFA1, and that might be encountered during the field surveys.¹⁸⁵
12

13 The Archaeological Survey Plan (ASP) and Visual Assessment of Historic Properties Study Plan
14 (VAHP) were followed to guide the field surveys and documentation of cultural resources. The
15 two-mile study area focuses on collecting information pertaining to archaeological and
16 aboveground resources, as well as any traditional cultural properties (TCPs) or Historic
17 Properties of Religious and Cultural Significance to Indian Tribes (HPRCSIT). The five-mile study
18 area focused on collecting information pertaining to above ground resources and cultural
19 resources that had the potential to be TCPs and/or HPRCSITs between the two-mile study area
20 and up to five miles from the proposed routes centerline. The Visual Assessment utilized this
21 study area as well as applicable results from the two-mile study area. The five-mile study area is
22 documented in the Reconnaissance Level Survey – Visual Assessment of Historic Properties
23 (RLS) and Intensive Level Survey – Visual Assessment of Historic Properties (ILS).¹⁸⁶
24

25 In reparation of RFA1, and consistent with how surveys were conducted as approved in the
26 *Final Order on ASC*, archaeological surveys are being conducted in two phases. Phase 1 consists
27 of completed surveys of an intensive pedestrian inventory of the entire direct analysis area to
28 which the applicant had right of entry to access for surveys. Any additional surveys required to
29 complete an inventory of 100 percent of the final selected route, as well as any necessary
30 subsurface inventory or evaluation efforts, would be conducted during Phase 2. Phase 2 is
31 anticipated to occur after the site certificate has been issued, but prior to construction, when
32 site access has been secured for all properties as captured in Historic, Cultural, and

¹⁸³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 470--472.

¹⁸⁴ “ORS 469.402 expressly authorizes EFSC to delegate future review and approval to ODOE...” B2HAPPDoc7
Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, page 811.

¹⁸⁵ Oregon State Historic Preservation Office (SHPO), Confederated Tribes of the Umatilla Indian Reservation
(CTUIR) Tribal Historic Preservation Office, U.S. Department of Agriculture, Forest Service (USFS), and BLM offices.
Oregon SHPO databases consulted include Oregon Archaeological Records Remote Access and Oregon Historic
Sites Database. Other resources include Historic Trails website, USGS Mineral Resource Data System, General Land
Office plats, early USGS and state maps, other historic maps and aerial photographs, ethnographic literature, and
historical contexts.

¹⁸⁶ B2HAMD1 RFA1 2023-06-08, Section 7.1.8.2 and B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-
27, pp. 538-539.

1 Archaeological Resources Condition 2.¹⁸⁷ Continued survey efforts would focus on high
2 probability areas, confirming archaeological site boundaries, confirming archaeological isolated
3 finds, NRHP-eligibility testing, and 100 percent inventory of the proposed RFA1 site boundary
4 additions.
5

6 RFA1 Attachment 7-17 illustrates the locations where surveys were conducted associated with
7 the proposed transmission line routes and Attachment 7-18 shows the locations of surveys
8 associated with proposed roads segments.
9

10 Survey Results and Potential Impacts for RFA1
11

12 Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1, below
13 provides the results from the surveys conducted in preparation of RFA1. Table 21 identifies if a
14 resource is newly identified (not identified in the ASC) or if it was previously identified, in both
15 cases, certificate holder provides an updated impact assessment based on the proximity of the
16 road or route segment proposed in RFA1 to each resource and proposed or update mitigation
17 measures.
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¹⁸⁷ See Final Order on ASC Section III.D., Survey Data Based on Final Design and Site Access.

Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1

Resource Number	County	Generalized Resource Description/ Resource Type	NRHP Recommendation	Project Route	Project Component	Land Ownership	Applicable EFSC Standard	Impact Avoided?	Resource Newly Considered	Mitigation or Management Comments
Oregon National Historic Trail Route	Umatilla, Union, Baker	Historic Trail	Eligible	Access Road Changes in Umatilla, Union, and Baker Counties	New Road, Primitive	PV	a) Potential Historic Property;	No – No significant physical and visual/auditory impact. No intact NHT segments at road change locations	No	If avoidance not possible, testing/segment eligibility evaluation/ consultation needed.
Sand Hollow Battleground	Morrow/ Umatilla	HPRCSIT	Eligible	Access Road Changes in Morrow and Umatilla Counties	New Road, Bladed, Primitive	BLM, DOD, PV	a) Potential Historic Property	No – potential significant physical and visual/auditory impacts	No	If avoidance not possible, testing (metal detecting)/ continued consultation needed.
Sisupa	Morrow	HPRCSIT	Eligible	Access Road Changes in Morrow County	New Road, Bladed, Primitive	DOD, PV	a) Potential Historic Property	No – potential significant physical and visual/auditory impacts	No	If avoidance not possible, continued consultation needed.
4B2H-EK-07	Baker	Historic: Water Conveyance (Smith Ditch)	Unevaluated	Access Road Changes in Baker County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property;	No – Physical and visual/auditory impacts not significant.	No	Use of existing canal access road will not physically alter ditch. No further management.
7B2H-DM-ISO-22	Baker	Precontact: Isolated Find - Debitage	Unevaluated	Durbin Quarry (ODOT) Alternative	Route Centerline, New Road, Bladed	BLM	a) Potential Historic Property;	Yes	Yes	Flag/Avoid
7B2H-BB-ISO-04	Baker	Precontact: Isolated Find - Debitage	Unevaluated	Durbin Quarry (ODOT) Alternative	Route Centerline, New Road, Bladed	PV	a) Potential Historic Property; b) Archaeological site on private lands	Yes	Yes	Flag/Avoid
35BA01570/ 4B2H-EK-27	Baker	Historic Road	Not Eligible	Durbin Quarry (ODOT) Alternative	New Road, Bladed	BLM, PV	b) Archaeological site on private land.	No	No	No further management
35BA01571/ 4B2H-EK-28	Baker	Historic Water Conveyance	Not Eligible	Durbin Quarry (ODOT) Alternative	New Road, Bladed	BLM, PV	a) Potential Historic Property; b) Archaeological site on private lands	Yes	No	No further management
35BA01564/ 4B2H-EK-30	Baker	Historic Water Conveyance	Not Eligible	Durbin Quarry (ODOT) Alternative	New Road, Bladed	BLM	None - Archaeological site not eligible for NRHP. Federal land.	Yes	No	No further management
8B2H-DM-23	Baker	Multi-component: Precontact: Lithic/Tool Scatter; Historic mine	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements, New Road, Bladed	BLM	a) Potential Historic Property	No – Potential significant physical impact for new road. No significant physical impact for existing road with mitigation.	Yes	If avoidance not possible, testing/ eligibility evaluation needed for new road. Gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
8B2H-DM-24	Baker	Precontact: Lithic/Tool Scatter	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements	PV	a) Potential Historic Property; b) Archaeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.

Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1

Resource Number	County	Generalized Resource Description/ Resource Type	NRHP Recommendation	Project Route	Project Component	Land Ownership	Applicable EFSC Standard	Impact Avoided?	Resource Newly Considered	Mitigation or Management Comments
8B2H-DM-25	Baker	Precontact: Lithic/Tool Scatter	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
8B2H-DM-26	Baker	Precontact: Lithic scatter	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
8B2H-DM-27	Baker	Precontact: Lithic/Tool Scatter	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
8B2H-DM-20	Baker	Precontact: Lithic/Tool Scatter	Unevaluated	True Blue Gulch	Existing Road, Substantial Modification, 71-100% Improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
35BA1585 (6B2H-SA-14)	Baker	Precontact: Lithic Scatter	Unevaluated	Access Road Changes in Baker County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
4B2H-EK-17	Baker	Historic Water Conveyance	Unevaluated	Access Road Changes in Baker County	Existing Road, No Improvements Permitted	PV	a) Potential Historic Property	Yes	Yes	No features of site in existing road. No improvements of existing road permitted within 30 meters of site.
NRCS2011-T11S-R42E-S23/01	Baker	Precontact: Isolated Find: Debitage	Unevaluated	Access Road Changes in Baker County	New Road, Bladed	PV	a) Potential Historic Property; b) Potential archaeological object on private lands	No – potential physical impact	Yes	Flag/Avoid. Boundary Probe.
02S3600E07002	Union	Historic	Not Eligible	Access Road Changes in Union County	Existing Road, Substantial	USFS, State of Oregon	None - Archeological site not eligible for NRHP. Federal land.	No – physical impact not significant.	Yes	No further management

Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1

Resource Number	County	Generalized Resource Description/ Resource Type	NRHP Recommendation	Project Route	Project Component	Land Ownership	Applicable EFSC Standard	Impact Avoided?	Resource Newly Considered	Mitigation or Management Comments
					Modification, 71-100% Improvements					
8B2H-AB-01.2	Malheur	Historic: South Canal Segment	Unevaluated (No status listed)	Access Road Changes in Malheur County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property	Yes	Yes	No further management
8B2H-JS-05	Malheur	Historic: Canal	Unevaluated (No Status listed)	Access Road Changes in Malheur County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property	Yes	Yes	No further management
8B2H-DM-51	Malheur	Multicomponent: Lithic Scatter and Refuse Scatter	Unevaluated	Access Road Changes in Malheur County	New Road, Bladed	BLM, PV	a) Potential Historic Property; b) Archaeological site on private lands	No – potential physical impact	Yes	If avoidance not possible, testing/eligibility evaluation needed.
8B2H-ND-04	Malheur	Precontact: Lithic Scatter	Unevaluated	Access Road Changes in Malheur County	New Road, Bladed	BLM	a) Potential Historic Property	No – potential physical impact	Yes	If avoidance not possible, testing/eligibility evaluation needed.
35ML1674 (B2H-SA-33)	Malheur	Historic: Water Conveyance (Vines Ditch)	Eligible	Access Road Changes in Malheur County	Existing Road, Substantial Modification, 71-100% Improvements	BLM, PV	a) Potential Historic Property; b) Archaeological site on private lands	No – physical impact not significant with mitigation. Visual/auditory impacts not significant	No	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
35ML1675 (B2H-SA-32)	Malheur	Historic: Railroad	Eligible	Access Road Changes in Malheur County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property; b) Archaeological site on private lands	No – physical impact not significant with mitigation. Visual/auditory impacts not significant	No	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
35ML1678 (B2H-BS-77)	Malheur	Precontact: Lithic/Tool Scatter	Eligible	Access Road Changes in Malheur County	New Road, Bladed	BLM	a) Potential Historic Property	No – potential physical impact	Yes	If avoidance not possible, testing/eligibility evaluation needed.
35ML2203 (B2H-SA-39)	Malheur	Historic: Water Conveyance	Eligible	Access Road Changes in Malheur County	Existing Road, No Improvements Permitted	PV	a) Potential Historic Property; b) Archaeological site on private lands	Yes	Yes	No improvements of existing road permitted within 30 meters of site.
4B2H-EK-47	Malheur	Historic: Water Conveyance (Vale Oregon Main Canal Segment)	Unevaluated	Access Road Changes in Malheur County	New Road, Primitive	PV	a) Potential Historic Property	Yes	No	No further management.

1 *III.K.1.c Mitigation: Existing Site Certificate Conditions*
2

3 As discussed in the *Final Order on ASC*, the Historic Properties Management Plan (HPMP – Final
4 Order Attachment S-9), imposed under Historic, Cultural, and Archaeological Resources
5 Condition 2, serves as a framework how to address resource surveys, evaluate impacts to
6 resources, avoid, minimize and mitigate impacts to resources protected under OAR 345-022-
7 0090. During the review of the ASC, the Department compiled all the inventoried resources,
8 proposed avoidance and mitigation measures associated with resource type, which include
9 more specific mitigation requirements for Oregon Trail segments in each county into tables and
10 added them to the HPMP as Appendix A.1 Inventory Tables with Management under OAR 345-
11 022-0090. The certificate holder adds the resources identified above to the HPMP Appendix A.1
12 Inventory Tables in RFA1 Attachment 7-14 in redline for convenient identification. Consistent
13 with the findings in the *Final Order on ASC* and the site certificate condition, for the areas
14 added to the site boundary proposed in RFA1, the Department recommends that the HPMP be
15 finalized and submitted to the Department once the final resource eligibility determinations
16 derive from the Section 106 process. Based upon the eligibility determinations the HPMP
17 Appendix A.1 Inventory Tables with Management under OAR 345-022-0090, will be updated to
18 determine a final impact assessment and then appropriate mitigation measures associated with
19 direct or indirect impacts to the various historic, cultural, and archaeological resources. The
20 HPMP Appendix A.1 Inventory Tables with Management also includes the following tables
21 which identify a specific type of mitigation suite which may be applied for various types of
22 resources.¹⁸⁸
23

- 24 • Table HCA-4b: Department Recommended Mitigation for NRHP-Eligible Oregon
25 Trail/NHT Segments
- 26
- 27 • Table HCA-8: Potential Minimization and Mitigation of Direct Impacts to Resource Site
28 Types Identified within the Direct Analysis Area
- 29
- 30 • Table HCA-9 Potential Minimization and Mitigation Methods for Indirect Impacts
31
- 32 • Table HCA-10 Potential Minimization and Mitigation Methods for Indirect and Direct
33 Impacts to Aboveground Resources
34
35

¹⁸⁸ From the Oregon Supreme Court’s Decision regarding the specificity of mitigation for certain types of resources, “EFSC’s final order contains specific information identifying the resources that will be impacted, the extent of those impacts, and how those impacts will be mitigated.....final order prescribes in Table HCA-4b the specific types of mitigation that EFSC required for this project: design modification...plus “at least one of the” mitigation methods found in former OAR 345-001-0010(33)(c) - (e), “with a demonstrated direct benefit to affected area (county of resource site),” and with the priority of those additional mitigation methods further specified. The final order also requires Idaho Power to demonstrate that any mitigation efforts required by federal “section 106 review”²⁶ are sufficient to meet the state law standards articulated in Table HCA-4b...” B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, page 811.

1 The Department recommends the updated HPMP Appendix A.1 Inventory Tables with
2 Management under OAR 345-022-0090, included in RFA1 as Attachment 7-14 be reflected in
3 Historic, Cultural, and Archaeological Resources Condition 2 to ensure that resources associated
4 with RFA1 are included in the Appendix to the HPMP. This minor revision is reflected in
5 Attachment 1: Draft First Amended Site Certificate, to this order.

6
7 Historic, Cultural, and Archaeological Resources Condition 1 (GEN-HC-01) continues to apply to
8 the proposed site boundary additions in RFA1 and requires that during final design and
9 construction of the facility, the certificate holder designs and locate facility components to
10 avoid direct impacts to Oregon Trail/National Historic Trail resources.

11
12 Historic, Cultural, and Archaeological Resources Condition 3 (OPS-HC-01) continues to apply to
13 the proposed site boundary additions in RFA1, and requires the submissions of the HPMP after
14 construction is completed and any results of unanticipated discoveries addressed in the
15 inadvertent Discovery Plan.

16
17 **III.K.2. Conclusions of Law**

18
19 Based on the foregoing analysis, and subject to compliance with the existing site certificate
20 conditions described above, the Department recommends the Council find that the
21 construction and operation of the portions of the facility added to the site boundary in RFA1
22 are not likely to result in significant adverse impacts to historic, cultural or archaeological
23 resources that have been listed on, or would likely be listed on the National Register of Historic
24 Places or other archaeological objects or sites identified under OAR 345-022-0090.

25
26 **III.L. RECREATION: OAR 345-022-0100**

27
28 *(1) To issue a site certificate, the Council must find that the design,*
29 *construction and operation of a facility, taking into account mitigation, are*
30 *not likely to result in a significant adverse impact to important recreational*
31 *opportunities.*

32
33 *(2) The Council must consider the following factors in judging the importance*
34 *of a recreational opportunity:*

35
36 *(a) Any special designation or management of the location;*

37
38 *(b) The degree of demand;*

39
40 *(c) Outstanding or unusual qualities;*

41
42 *(d) Availability or rareness;*
43

1 *(e) Irreplaceability or irretrievability of the opportunity.*

2
3 *(3) The Council may issue a site certificate for a special criteria facility under*
4 *OAR 345-015-0310 without making the findings described in section (1). In*
5 *issuing such a site certificate, the Council may impose conditions of approval*
6 *to minimize the potential significant adverse impacts from the design,*
7 *construction, and operation of the facility on important recreational*
8 *opportunities.*

9
10 *(4) The Council must apply the version of this rule adopted under*
11 *Administrative Order EFSC 1-2002, filed and effective April 3, 2002, to the*
12 *review of any Application for Site Certificate or Request for Amendment that*
13 *was determined to be complete under OAR 345-015-0190 or 345-027-0363*
14 *before the effective date of this rule. Nothing in this section waives the*
15 *obligations of the certificate holder and Council to abide by local ordinances,*
16 *state law, and other rules of the Council for the construction and operation of*
17 *energy facilities in effect on the date the site certificate or amended site*
18 *certificate is executed.*¹⁸⁹

19
20 **III.L.1. Findings of Fact**

21
22 The Recreation standard requires the Council to find that the design, construction and
23 operation of a facility are not likely to result in significant adverse impacts to ‘important’
24 recreational opportunities.¹⁹⁰ Therefore, the Recreation standard applies to only those
25 recreation areas that the Council finds “important” using the factors listed in the sub-
26 paragraphs of section (1) of the standard. The analysis area for the Recreation standard is the
27 area within and extending two miles from the proposed RFA1 site boundary additions. The
28 certificate holder provides evidence about potential impacts to recreation opportunities
29 determined by the certificate holder to be important in Attachment 7-15, Figure 7-19, and
30 Figure 7-20 of the RFA1.

31
32 To analyze the proposed site boundary additions against this standard, Council must first
33 evaluate whether the identified recreational opportunity is important. The Council must then
34 evaluate whether the design, construction and operation of the proposed site boundary
35 additions could adversely impact the identified important recreational opportunity. If the site
36 boundary additions could adversely impact the resource, then the Council must consider the
37 significance of the possible impact using the definition of significance above.

¹⁸⁹ OAR 345-022-0100, effective December 19, 2022.

¹⁹⁰ OAR 345-001-0010(52) defines “significant” as “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 resources 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.”

1
2 *III.L.1.a Recreational Opportunities within the Analysis Area*
3

4 In preparation of RFA1, certificate holder evaluated online data, maps, reports, guidebooks,
5 websites, and similar sources likely to provide site-specific information about recreational
6 opportunities in the analysis area for the site boundary additions proposed in RFA1. Based on
7 this assessment, certificate holder identified one new potential recreational opportunity, the
8 Glass Hill Preserve/State Natural Heritage Area (SNHA).
9

10 Generally, the Department would not consider areas where there is no public access, where
11 there are no recreational facilities, and that are managed for conservation or research purposes
12 a recreational opportunity. However, certificate holder identifies Glass Hill Preserve/State
13 Natural Heritage Area -as a potential recreational opportunity, therefore RFA1 and the
14 Department evaluate, using the same methods as Council approved in the *Final Order on ASC*,
15 the newly identified potential recreational opportunity against the importance criteria listed in
16 OAR 345-022-0100(1)(a)–(e), which are: a) any special designation or management of the
17 location, b) the degree of demand, c) outstanding or unusual qualities, d) availability or
18 rareness, e) irreplaceability or irretrievability of the opportunity. The importance assessment
19 for potential important recreational opportunity is based on the combined contribution of all
20 five importance factors, weighed equally.¹⁹¹ RFA1, Attachment 7-15, Table 2 provides an
21 assessment of the importance of the Glass Hill Preserve/SNHA, concluding that the Glass Hill
22 Preserve is not an important recreational opportunity under the Council’s rules, for the
23 certificate holder’s reasoning and for the reasons provided below, the Department
24 recommends Council determine that the Glass Hill Preserve is not an important recreational
25 opportunity. The Glass Hill Preserve/SNHA is a protected area under OAR 345-022-0040, see
26 Section III.F., *Protected Areas*, of this order and RFA1 Attachment 7-2 for an assessment of
27 potential impacts Glass Hill Preserve including potential traffic, noise, and visual impacts.
28

29 *Any special designation or management of the location:*
30

31 As discussed in Section III.F., *Protected Areas*, the Glass Hill Preserve/SNHA was established in
32 2020 and is part of a privately owned nature reserve/conservation easement managed by the
33 Blue Mountain Land Trust. Because the preserve is on privately-owned lands, ~~there is not~~ open
34 public access is unknown. The Glass Hill Preserve does have a special designation under the
35 Natural Areas Program. The Oregon Legislature established the Oregon Natural Areas Program
36 in 1979 as a way to protect high quality native ecosystems and rare plant and animal species.
37 According to the Oregon State University program information, the goals of the Oregon Natural
38 Areas Program are to create a discrete and limited system of natural areas representing the full
39 range of Oregon's natural heritage resources. These areas are to be used for scientific research,
40 education and nature interpretation.¹⁹²

¹⁹¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 542.

¹⁹² Natural Areas Program. <https://inr.oregonstate.edu/orbic/natural-areas-program> Accessed by Department 06-12-2023.

1
2 Because the designation and the management of the preserve is for conservation of habitat and
3 to protect special species, and there is not public access to the site, the Department
4 recommends Council find that the designation and management of the preserve is not for
5 recreational purposes.

6
7 *Degree of demand:*

8
9 In preparation of RFA1, certificate holder contacted staff at Oregon State University, Institute
10 for Natural Resources who implement the Natural Areas Program, and they indicated that the
11 public is likely to not have access to the privately owned land that is in a conversation
12 easement.¹⁹³ Certificate holder indicates that data on visits to the site is not available, but
13 assumes there to be low demand/visits because the remote location, lack of recreational
14 facilities, and because of the lack of open access. The Department recommends Council find
15 that for these reasons, the degree of demand is low.

16
17 *Outstanding or unusual qualities:*

18
19 Certificate holder indicates that the conservation easement may allow for hunting and fishing
20 within a forested, wildlife managed area (if permitted, on all or specific tax lots), however, the
21 Department highlights that the ability to do those activities would be contingent upon
22 permission from landowner and would have to be consistent with the provisions of the
23 easement. From a conservation standpoint, the preserve may have outstanding or unusual
24 qualities, however, privately-owned land with lack of public access where the primary
25 management goal is conservation does not support outstanding or unusual recreational
26 qualities. The Department recommends Council find that the preserve does not have
27 outstanding or unusual qualities from a recreational perspective.

28
29 *Availability or rareness:*

30
31 Certificate holder highlights that in this area in Union County, there are other public lands
32 available to hunt, fish, and recreate on, and that there are other lands with similar habitat
33 qualities. For instance, Department identifies the Glass Hill Access Area, which is a cooperative
34 between landowners and ODFW to maintain public hunting access on private lands and
35 increase access to public lands.¹⁹⁴ The Department recommends Council find that due to the
36 availability of other lands that offer recreational opportunities in the area and that there is not
37 open public access to the Glass Hill Preserve/SNHA, the Glass Hill Preserve/SNHA is not
38 available or rare recreational opportunity.

¹⁹³ B2HAMD1 RFA1 2023-06-08. Section 7.1.4. Personal communication between Kristen Gulick, Tetra Tech, and Lindsey Wise, Oregon State University, Institute for Natural Resources, July 13, 2022, and Meghan Ballard, Blue Mountains Conservancy, July 23, 2022, Attachment 7-2.

¹⁹⁴ https://www.dfw.state.or.us/maps/access_habitat/glasshill.pdf Accessed by Department 06-12-2023.

Department emphasizes that the names of the Glass Hill Preserve/SNHA and Glass Hill Access Area are similar, and they are the similar location, however, the Glass Hill Access Area is near Ladd Marsh and I-84.

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Irreplaceability or irretrievability of the opportunity:

Certificate holder states that the preserve would be replaceable due to similar terrain available on public lands. The Department disagrees and, based upon its understanding of the availability of private lands and willingness of landowners to put lands into a conservation easement, it would be difficult to replace or find equivalent lands to designate under a conservation easement. Nevertheless, because the lack of public access, the lack of facilities on the site, as well as the conservation/research management intent of the Glass Hill Preserve, the Department recommends Council find that the Glass Hill Preserve does not have recreational opportunities that could then be replaced.

Table 22: *Proximity of ASC and RFA1 Routes to Important Recreation Opportunities in Analysis Area*, below presents important recreational opportunities within the analysis area of the ASC and RFA1 and their proximity to approved routes and transmission line alternatives proposed in RFA1. Below Table 22, the Department provides a discussion of potential impacts to important recreational opportunities from the proposed RFA1 site boundary additions including direct loss of recreational opportunities, potential visual, noise, and traffic-related impacts.

Table 22: Proximity of ASC and RFA1 Routes to Important Recreation Opportunities in Analysis Area

Important Recreational Opportunity	Distance to Route Centerline	County
Blue Mountain Forest State Scenic Corridor	Crossed (approved route)	Union
Ladd Marsh Wildlife Area	Crossed (approved route)	Union
Burnt River Extensive Recreation Management Area	Crossed (approved route) Crossed (True Blue Gulch alternative RFA1)	Baker
Grande Tour Scenic Bikeway	Crossed (approved route)	Union and Baker
Blue Mountain Scenic Bikeway	Crossed (approved route)	Morrow and Umatilla
Oregon Trail Area of Critical Environmental Concern – National Historic Oregon Trail Interpretive Center Parcel	106 feet (approved route)	Baker
Ladd Marsh Wildlife Area	208 feet (Morgan Lake alternative)	Union
Owyhee River Below Dam Special Recreation Management Area	250 feet (approved route)	Malheur
Morgan Lake Park	0.2 mile (Morgan Lake alternative)	Union
Oregon Trail Birch Creek Special Recreation Management Area	0.2 mile (approved route)	Malheur
Hilgard Junction State Park	0.3 mile (approved route)	Union
Hilgard Junction State Park	0.4 mile (Morgan Lake alternative)	Union

Table 22: Proximity of ASC and RFA1 Routes to Important Recreation Opportunities in Analysis Area

Important Recreational Opportunity	Distance to Route Centerline	County
Deer Flat National Wildlife Refuge – Snake Island Unit	0.4 mile (approved route)	Malheur
Weiser Dunes Off-highway Vehicle Play Area	0.5 mile (approved route)	Washington County (Idaho)
Oregon Trail Tub Mountain Special Recreation Management Area	0.5 mile (approved route)	Malheur
Morgan Lake Park	0.6 mile (approved route)	Union
Bully Creek Reservoir	0.7 mile (approved route)	Malheur
Farewell Bend State Recreation Area	0.7 miles (approved route)	Baker
Snake River Breaks Extensive Recreation Management Area	0.8 mile (approved route) 1.2 miles (Durbin Quarry alternative RFA1)	Baker
Snake River Islands (Huffman Island) Wildlife Area	0.9 mile (approved route)	Malheur
Oregon Trail Interpretive Park at Blue Mountain Crossing	1.0 mile (approved route)	Union
Umatilla National Wildlife Refuge	1.3 miles (approved route)	Morrow
Powder River WSR, Area of Critical Environmental Concern	1.4 miles (approved route)	Union and Baker
Virtue Flat Off-highway Vehicle Area	1.5 miles (approved route)	Baker

1

1
2 *III.L.1.b Potential Impacts to Important Recreation Opportunities*

3
4 *III.L.1.b.1 Direct Loss of Recreational Opportunity*

5
6 A direct loss of opportunity could occur where the proposed RFA1 site boundary additions
7 could result in permanent alteration such that the resource no longer exists in its current state.
8 Indirect loss could result from temporary traffic and noise impacts, and permanent visual
9 impacts of proposed facility structures, evaluated below.

10
11 Three access road site boundary additions proposed in RFA1 would cross small portions of the
12 Blue Mountain Forest State Scenic Corridor (Union County), Blue Mountain Century Scenic
13 Bikeway (Umatilla County), and the Grand Tour Scenic Bikeway (Baker County). The proposed
14 road additions largely overlap with the previously approved site boundary. For instance, RFA1
15 Figure 4-2 illustrates road segment UN-034 as a small road extension that overlaps with the
16 approved site boundary and only slightly extends into a new portion of site boundary that
17 touches the boundary of the scenic corridor. The proposed True Blue Gulch Transmission Line
18 Alternative and associated proposed road additions/modifications cross the Burnt River
19 Extensive Recreation Management Area, as illustrated on RFA Figure 7-19, Map 3 and Figure 4-
20 1, Map 2. However, for all of these slight site boundary adjustment additions, the extent of any
21 losses from the crossings would not result in a change to the overall use or importance of the
22 resource, which is consistent with the findings in the *Final Order on ASC*.

23
24 *III.L.1.b.2 Potential Noise Impacts*

25
26 Construction-related noise impacts from the road and transmission line route additions
27 proposed in RFA1 would be similar to those evaluated in the *Final Order on ASC* and would
28 cause some noise impact at recreation opportunity sites that are close to the proposed site
29 boundary additions, however, these impacts would be short-term and temporary. Construction
30 activities that would cause noise impacts at most recreation opportunities include blasting and
31 rock breaking, implosive devices used during conductor stringing, helicopter operations, and
32 vehicular traffic. The construction activities would progress along the corridor of the proposed
33 transmission line, and no area would be exposed to construction noise for the entire
34 construction period. Recreational opportunities within a half-mile or less, would experience
35 noise impacts during facility construction. However, noise would attenuate with distance,
36 topography, and vegetative screening so it is possible that the decibel volume of typical
37 construction equipment may be lower during actual facility construction.¹⁹⁵

38
39 During typical operating conditions, corona noise is estimated at 34 dBA at the edge of the
40 facility right of way (ROW). Thirty-four dBA is barely audible and would not cause a significant

¹⁹⁵ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 547.

1 noise impact at any recreation opportunity.¹⁹⁶ Department also highlights that typical
2 recreational activities occur during the day when ambient noise levels are higher and, even
3 under conditions where corona noise may be elevated, it is likely that recreational activities
4 would mask any operational transmission line noise.

5
6 *III.L.1.b.3 Potential Traffic-Related Impacts*
7

8 Construction of the road and transmission line route additions proposed in RFA would cause
9 short-term impacts to those recreation opportunity sites that are near or crossed by the
10 additions, or where construction traffic routes pass near those areas, similar to the potential
11 impacts evaluated in the *Final Order on ASC*. The impacts would be short-term and limited in
12 duration to construction related traffic. Construction traffic would include multiple vehicle
13 types, but the majority of traffic trips would be for construction workers daily commuting to
14 work sites.

15
16 Public Services Condition 2 which requires the finalization of a county-specific traffic
17 management plan would continue to apply to the site boundary additions proposed in RFA1.
18 Measures that would address construction-related impacts include the use of traffic control
19 measures including flaggers, pilot vehicles, and temporary closures if necessary, and that road
20 closures would be publicized in advance and coordinated with landowners, emergency services,
21 and law enforcement.¹⁹⁷

22
23 *III.L.1.b.4 Potential Visual Impacts*
24

25 As discussed, and summarized in Section III.F., *Protected Areas*; III.F.1.b.5.1, *Methodology for*
26 *Visual Impact Assessment*, of this order, to evaluate the impact of the proposed site boundary
27 additions on protected areas, scenic, and recreation resources, the certificate holder used the
28 Council approved visual impact methodology which is based on the BLM and USFS visual impact
29 assessment methods, and the Council's definition of significant. Council's rules do not require,
30 or provide, a specific methodology for evaluating visual impacts to Recreational Resources (or
31 Protected Areas or Recreation resources). Also, as discussed in Section III.F., *Protected Areas*, of
32 this order, the visual impact assessment extends 5 miles from the proposed site boundary
33 additions in non-forested settings, and 10 miles in forested settings. Beyond those distances,
34 Council previously found that visibility of the facility components would be negligible. Because
35 the vast majority of site boundary additions in RFA1 are roads, which do not have a vertical
36 visual component associated with them, the visual impact assessment was further defined by
37 proximity, i.e., foreground (<0.5 miles), middleground (0.5 to 5 miles), or background distances
38 (> 5 miles). RFA1 Attachment 7-15 Table 1 provides the visual impact assessment from the road
39 and route site boundary additions proposed in RFA1.

¹⁹⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp 547-548. Idaho Power - Rebuttal Testimony - Kling - Exhibit E page 5, 2022-11-12; . Idaho Power / Rebuttal Testimony of Mark Bastasch / Issues NC-1, NC-2, NC-3, NC-4, and NC-6/ Exhibit L, Reanalysis of MP11 Area, p. 2-3 of 4, 2022-11-12.

¹⁹⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 547.

1
2 RFA1 Attachment 7-15 Table 1 provides the visual impact assessment from the road and route
3 site boundary additions proposed in RFA1. RFA1 Figure 7-19 illustrates the overview of the
4 location of recreational resources within the analysis area for RFA1. Figure 7-20 is a viewshed
5 zone of visual influence presentation of the visual impact assessment area for the proposed
6 routes in RFA1. Certificate holder indicates that the distance from the proposed site boundary
7 additions in RFA1 from recreational resources increased or remained the same compared to the
8 evaluation done for the ASC, thus potential visual impacts would be less than or equal to what
9 was previously approved.¹⁹⁸ Two important recreational resources were identified within the
10 analysis area from a proposed transmission line route alternative in RFA1; Burnt River Canyon
11 and Snake River Breaks Extensive Recreation Management Area (ERMA).

12
13 The True Blue Gulch alternative proposed in RFA1 would cross the Burnt River Canyon (VRM B3
14 - BLM – Vale District, Baker Resource Area Management Plan), similar to the approved route in
15 the ASC, which would also cross the recreational resource. The Burnt River Canyon recreational
16 area is considered to have low to moderate visitation rates, and there are no developed
17 facilities within the area. It is managed to provide a primitive recreation experience and to
18 support dispersed recreation activities.¹⁹⁹ Views will continue to be limited in duration and
19 episodic, primarily experienced from a moving vehicle. Towers that are visible within the
20 recreational resource as a result of the True Blue Gulch Transmission Line Alternative will add
21 moderate visual contrast (within central/western portion of the area) to what was previously
22 approved for the ASC, therefore, the comprehensive visual impacts are anticipated to remain
23 medium intensity and less than significant as a result of RFA 1. Temporary work areas and
24 access roads may be visible from high elevation areas throughout the area. Council previously
25 found that the BLM authorized the facility to cross BLM-owned land in this area, and specifically
26 changed its own management plan for visual resources from VRM Class II to VRM Class IV which
27 means that activities may modify the landscape and changes can be high, the Council also
28 previously found that the facility would not cause a significant adverse impact to the scenic
29 resources and values of the specific area within the Burnt River Canyon Class IV managed area.
30 Department also highlights that views of transmission towers associated with the proposed
31 route in RFA1, would not preclude recreators from recreational activities.

32
33 The Durbin Quarry Transmission Line Alternative would be located 1.2 miles northeast of the
34 Snake River Breaks ERMA. The Snake River Breaks ERMA is managed by the BLM to provide
35 day or overnight recreation opportunities, camping, upland bird and big game hunting, fishing,
36 boating, hiking, and driving for pleasure. Recreation facilities for all lands within the Snake River
37 Breaks ERMA include one developed and seven semi-developed campgrounds.²⁰⁰ Similar to the
38 approved route, the proposed alternative would parallel an existing 138-kV transmission line in
39 this area and would be located closer to the existing transmission line and further away from
40 the recreational opportunity. Access roads and work areas associated with the proposed

¹⁹⁸ B2HAMD RFA1 2023-06-08. Attachment 7-15.

¹⁹⁹ Id.

²⁰⁰ B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28, Section 3.3.16.

1 change would continue to be located on the west side of I-84, and therefore would not impact
2 recreation opportunities within the ERMA. The facility would continue to be visible only from
3 the higher elevations of the ERMA and would not be visible from the surface of the reservoir or
4 along the shore, which is the primary recreational area. The proposed alternative in RFA1
5 would be 0.4 miles further away from the recreational opportunity than the approved route in
6 ASC. Certificate holder indicates that comprehensive visual impacts are anticipated to be low
7 intensity and less than significant as a result of RFA 1 Visual impacts would not preclude the
8 ability of the resource to provide recreational value for which it is recognized.

9
10 Previously imposed Recreation Condition 1 related to the approved Morgan Lake Park, is not
11 impacted by RFA1 and continues to apply to the facility and certificate holder.

12 13 **III.L.2. Conclusions of Law**

14
15 Based on the foregoing analysis, and subject to compliance with the existing site
16 certificate conditions, the Department recommends the Council find that the design,
17 construction and operation of the portions of the facility added to the site boundary in
18 RFA1 are not likely to result in a significant adverse impact to important recreational
19 opportunities.

20 21 **III.M. PUBLIC SERVICES: OAR 345-022-0110**

22
23 *(1) Except for facilities described in sections (2) and (3), to issue a site*
24 *certificate, the Council must find that the construction and operation of the*
25 *facility, taking into account mitigation, are not likely to result in significant*
26 *adverse impact to the ability of public and private providers within the*
27 *analysis area described in the project order to provide: sewers and sewage*
28 *treatment, water, storm water drainage, solid waste management, housing,*
29 *traffic safety, police and fire protection, health care and schools.*

30
31 *(2) The Council may issue a site certificate for a facility that would produce*
32 *power from wind, solar or geothermal energy without making the findings*
33 *described in section (1). However, the Council may apply the requirements of*
34 *section (1) to impose conditions on a site certificate issued for such a facility.*

35
36 *(3) The Council may issue a site certificate for a special criteria facility under*
37 *OAR 345-015-0310 without making the findings described in section (1).*
38 *However, the Council may apply the requirements of section (1) to impose*
39 *conditions on a site certificate issued for such a facility.²⁰¹*

40

²⁰¹ OAR 345-022-0110, effective April 3, 2002.

1 **III.M.1. Findings of Fact**
2

3 The Council’s Public Services standard requires the Council to find that the facility is not likely to
4 result in significant adverse impacts on the ability of public and private service providers to
5 supply sewer and sewage treatment, water, stormwater drainage, solid waste management,
6 housing, traffic safety, police and fire protection, health care, and schools.
7

8 The analysis area for public services is the area within and extending 10-miles from the
9 proposed RFA1 site boundary additions. The facility would cross through five Oregon counties:
10 Morrow, Umatilla, Union, Baker, and Malheur. Additionally, two multi-use construction staging
11 areas would be located in the City of North Powder and the City of Huntington, but these areas
12 are not affected by the proposed RFA1 site boundary additions.
13

14 RFA1 does not propose any changes that would affect public service providers differently, that
15 would introduce any new components or related or supporting facilities requiring new types of
16 public service providers, or that would require changes to previously imposed conditions.
17

18 *III.M.1.a Sewer and Sewage Treatment*
19

20 During construction of the facility, the certificate holder will utilize portable toilets located at
21 multi-use areas and construction sites. The Council previously found that, subject to the
22 compliance of the certificate holder’s contractor with applicable state laws and rules, the
23 disposal of sanitary wastes from the portable toilets was not likely to impact public and private
24 sewer and sewage treatment providers within the analysis area.²⁰²
25

26 The proposed RFA1 site boundary additions are not expected to result in significant changes to
27 the volume of sanitary wastes generated during construction of the facility, and the certificate
28 holder has not proposed any changes to the method of disposal of those wastes. In addition, no
29 changes to facility components that would connect to public sewer and sewage treatment
30 systems during operation of the facility are proposed in RFA1. Accordingly, the Department
31 recommends the Council continue to rely on its previous findings from the *Final Order on the*
32 *ASC*.
33

34 *III.M.1.b Stormwater and Wastewater Drainage*
35

36 The facility components to be located within the proposed RFA1 site boundary additions are
37 not proposed to interconnect nor impact any public or private stormwater or wastewater
38 drainage systems. Therefore, the Department recommends Council finds that the construction
39 and operation of facility components within the proposed RFA1 site boundary additions are not
40 likely to result in significant adverse impacts to the ability of stormwater or wastewater
41 drainage service providers to provide drainage and processing services.
42

²⁰² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 579 of 10586.

1
2 *III.M.1.c Water Use*
3

4 In the *Final Order on the ASC*, the Council found that construction of the facility would require
5 up to approximately 54.8 million gallons of water.²⁰³ Primary water uses would include dust
6 control, sanitation, foundation construction, Longhorn Station construction, communication
7 station construction, access road construction, dust control during right-of-way clearing, station
8 grading and site work, and re-seeding restoration work upon construction completion. The
9 scope and extent of construction activities involved with constructing the facility, with the
10 changes proposed in RFA1, would be similar to those evaluated in the *Final Order on the ASC*.
11 As a result, no significant changes to the volume of water needed for construction is expected.
12

13 Potential sources of water for the construction and operation of the facility include the City of
14 Boardman, City of Pendleton, City of La Grande, Baker City, and the City of Ontario. The Council
15 previously found that these providers had adequate capacity to provide the water needed for
16 construction without significant impacts to their ability to meet other water needs.²⁰⁴
17

18 In addition to water used for construction, the approved facility would cross the Kingman
19 Lateral irrigation canal managed by the Owyhee Irrigation District. While there is a site
20 boundary addition proposed to accommodate additional improvements to an existing access
21 road near the canal,²⁰⁵ the segment of the transmission line that crosses the canal is not
22 affected by the changes proposed in RFA1 . Work on the road segment would be subject to the
23 1200-C Construction Stormwater Permit and Erosion and Sedimentation Plan required by Site
24 Certificate Condition GEN-SP-01. As a result, no significant impacts on the Owyhee Irrigation
25 District’s infrastructure are expected as a result of the changes proposed in RFA1.
26

27 *III.M.1.d Solid Waste Management*
28

29 In the *Final Order on the ASC*, the Council found the construction and operation of the facility,
30 subject to compliance with waste minimization conditions, was not likely to result in significant
31 adverse impacts to the ability of these providers to provide solid waste management
32 services.²⁰⁶
33

34 Construction of the approved facility is expected to generate approximately 3.7 million cubic
35 yards (yd³) of solid waste, including 3.5 million cubic yards of vegetative waste from site
36 clearing, 197,218 yd³ of excavation spoils, and 6,235 yd³ of other solid wastes. Approximately
37 2.8 million cubic yards (76%) of the waste would be diverted from landfills, either by mulching
38 vegetative wastes for use at the site, or recycling. The approximately 881,994 yd³ of undiverted
39 wastes would be transported by a waste disposal subcontractor to one of four landfills along

²⁰³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 580 of 10586.

²⁰⁴ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 582 of 10586.

²⁰⁵ B2HAMD1 RFA1 2023-06-08. Figure 4-2, Map 39

²⁰⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 585 of 10586.

1 the transmission line route: Finley Buttes Landfill in Morrow County, the Baker Sanitary Landfill
2 in Baker County, the Lytle Boulevard Landfill in Malheur County and the Clay Peak Landfill in
3 Payette County, Idaho.

4
5 The scope and extent of construction activities involved with constructing the facility, with the
6 changes proposed in RFA1, would be similar to those evaluated In the *Final Order on the ASC*.
7 As a result, no significant changes to the volume of wastes generated during construction is
8 expected.

9
10 *III.M.1.e Housing*

11
12 In the *Final Order on the ASC*, the Council found that there is sufficient capacity in short-term
13 housing options for construction workforce within the counties through which the transmission
14 line route passes, and that the construction and operation of the facility is not likely to result in
15 significant adverse impacts to the ability of public and private service providers to provide
16 housing within the analysis area.

17
18 The scope and extent of construction activities involved with constructing the facility, with the
19 changes proposed in RFA1, would be similar to those evaluated in the *Final Order on the ASC*.
20 As a result, no significant changes to the number of workers required during, or duration of,
21 construction of the facility, or the associated demand on housing, is expected. Accordingly, the
22 Department recommends the Council continue to rely on its previous findings.

23
24 *III.M.1.f Health Care*

25
26 In the *Final Order on the ASC*, the Council imposed Public Services Condition 5 (Condition PRE-
27 PS-04) requiring that the certificate holder finalize an Environmental and Safety Training Plan
28 prior to beginning construction. Subject to compliance with that condition, the Council found
29 that the construction and operation of the facility is not likely to result in significant adverse
30 impacts to the ability of public and private health care providers to provide health care services
31 within the analysis area.²⁰⁷

32
33 The scope and extent of construction activities involved with constructing the facility, with the
34 changes proposed in RFA1, would be similar to those evaluated In the Final Order on the ASC.
35 As a result, no significant changes to the number of workers required during, or duration of,
36 construction of the facility, or the associated demand on health care services, is expected.
37 Accordingly, the Department recommends the Council continue to rely on its previous findings
38 and conditions.

39
40 *III.M.1.g Schools*

41

²⁰⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, Page 625 of 10586.

1 In the *Final Order on the ASC*, the Council found that no permanent employees would be
2 required to relocate to the analysis area during operation of the facility and as a result, that the
3 construction and operation of the facility was not likely to result in significant adverse impacts
4 on the ability of public and private education providers to provide education services within the
5 analysis area. The proposed RFA1 site boundary additions are not expected to require any
6 permanent workers, and as a result are not expected to increase demand on education
7 providers in the analysis area. Accordingly, the Department recommends the Council continue
8 to rely on its previous findings.

9
10 *III.M.1.h Traffic Safety*

11
12 In the *Final Order on the ASC*, the Council found that, subject to compliance with the county-
13 specific Transportation and Traffic Plans required by Public Services Condition 2 (Condition PRE-
14 PS-02), that the construction and operation of the facility is not likely to result in significant
15 adverse impacts on traffic safety providers within the analysis area, or on traffic volumes and
16 congestion on proposed commuting and hauling routes proposed to be used by the applicant
17 during construction.²⁰⁸ Public Services Condition 2 (Condition PRE-PS-02) requires that the
18 certificate holder finalize the plans based on:

- 19
20 • Identification of the final material/equipment transportation, access, and haul routes;
21 • Evaluation and documentation of existing conditions of the routes/roads;

22
23 The condition also requires the following measures be included in the final plan, and that any
24 necessary road use permits, encroachment permits, oversize/overweight permits, or road use
25 or other legal agreements be obtained by the construction contractor or certificate holder prior
26 to construction.

27
28 The draft plan, as approved by Council in the *Final Order on the ASC*, includes the following
29 requirements that would apply to construction related traffic:

- 30 • Coordinating the timing and locations of road closures in advance with emergency
31 services such as fire, paramedics, and essential services such as mail delivery and school
32 buses.
33 • Maintaining emergency vehicle access to private property.
34 • Developing plans as required by county or state permits to accommodate traffic where
35 construction would require closures of state or county-maintained roads for longer
36 periods.
37 • Posting caution signs on county and state-maintained roads, where appropriate, to alert
38 motorists of construction and warn them of slow traffic.
39 • Using traffic control measures such as traffic control flaggers, warning signs, lights, and
40 barriers during construction to ensure safety and to minimize localized traffic
41 congestion. These measures will be required at locations and during times when trucks
42 will be entering or exiting highways frequently.

²⁰⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 603 of 10586.

- 1 • Using chase vehicles as required (or police vehicles, if required by ODOT) to give drivers
2 additional warning.
- 3 • Notifying landowners prior to the start of construction near residences.
- 4 • Fencing construction areas near residences at the end of the construction day, and
5 restoring residential roads damaged by construction activities as soon as possible.
- 6 • Installing access control devices at locations shown in the Road Classification Guide and
7 Access Control Plan (Attachment B-5 of this order).
- 8 • All construction personnel will be required to obey local speed limits and traffic
9 restrictions to ensure safe and efficient traffic flow. Construction vehicles on un-posted
10 project roads will travel at speeds that are reasonable and prudent for the conditions.
11 The applicant will work with ODOT and affected counties to establish reduced
12 construction speed limits on impacted roads.²⁰⁹
13

14 Proposed RFA1 site boundary additions would shift and adjust the location of new and
15 substantially modified roads. However, the location shifts do not change the previously
16 established analysis area (i.e. the proposed RFA1 site boundary additions would impact the
17 same local and state roads and traffic service providers as evaluated in the *Final Order on the*
18 *ASC*) or assumptions used to evaluate traffic impact. Traffic-related construction and operation
19 impacts from facility components to be located within the proposed RFA1 site boundary
20 additions would be similar to those evaluated In the *Final Order on the ASC*. Accordingly, the
21 Department recommends the Council continue to rely on its previous findings and conditions.
22

23 *Air Traffic Safety*

24

25 In the *Final Order on the ASC*, the Council found that the construction and operation of the
26 facility was not likely to result in significant adverse impacts to the ability of public and private
27 air traffic safety providers within the analysis area.²¹⁰ Impacts to public airports, including the
28 Boardman Airport, the Hermiston Municipal Airport, the Lexington Airport, the La Grande/
29 Union County Airport, the Baker City Municipal Airport, and the Miller Memorial Airpark near
30 Vale, were evaluated.

31
32 The construction of transmission towers could potentially create hazards for air navigation,
33 particularly if places within flight paths or the approach areas of air traffic facilities. The Council
34 previously imposed Site Certificate Condition PRE-PS-03, which requires the certificate holder
35 to submit a Notice of Proposed Construction or Alternation (FAA Form 7460-1) to the FAA and
36 to the Oregon Department of Aviation prior the construction of any transmission structures
37 within 5-miles of a public airport or the use of any cranes exceeding 200-ft in height. This
38 condition would apply to transmission structures and work performed within the site boundary
39 additions proposed in RFA1, however, we note that the three proposed transmission line route
40 alternatives are all located more than 5-miles from any public airport. There are proposed

²⁰⁹ See also section IV.H., *Fish and Wildlife Habitat*, Fish and Wildlife Habitat Condition 8, imposing a 25 MPH speed limit during construction.

²¹⁰ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 607 of 10586.

1 access road changes within 5-miles of the Baker City Municipal Airport, however these changes
2 would occur at ground level and are not expected to impact air traffic safety.²¹¹

3
4 The certificate holder may use helicopters to deliver equipment, materials, or personnel to
5 areas with limited access by road during the construction of the facility. When used, helicopters
6 are deployed from multi-use areas or light-duty fly yards located within four of the facility's
7 pulling and tensioning sites.²¹² The Council previously ~~imposed~~ adopted Public Services
8 Condition 3 (Condition GEN-PS-01) based upon the certificate holder's representation, which
9 requires, in part, that the certificate holder conduct all work in compliance with an approved
10 Helicopter Use Plan for the county in which the helicopter is being used.²¹³ The condition
11 requires the plans to coordinate with both state and federal aviation officials to provide notice
12 of helicopter operations to adjacent property owners and other aviators of the location and
13 timing of facility-related helicopter construction activities. In its review of the DPO, Council
14 acknowledged the need for flexibility during construction helicopter use because it would be
15 dependent upon the availability of materials and weather, and those items would be more
16 difficult to know and schedule 30 days in advance from any necessary helicopter use, therefore,
17 Council directed the inclusion of a 3-day landowner notice prior to helicopter operations,
18 specific to Public Services Condition 3(h) below.²¹⁴

19
20 **Recommended Amended Public Services Condition 3:** At least 90 days prior to use of a
21 helicopter(s) during construction, unless otherwise agreed to by the Department, the
22 certificate holder shall submit to the Department and each affected County Planning
23 Department a proposed Helicopter Use Plan. The plan must be approved by the
24 Department, in consultation with each county where helicopter use is proposed, prior to
25 use of a helicopter during construction. The certificate holder shall conduct all work in

²¹¹ B2HAMD1 RFA1 2023-06-08. Figure 4-2, Map 18.

²¹² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 604 of 10586.

²¹³ As described in Section II.B.1 of this order, RFA1 includes the certificate holder's request to amend conditions with preconstruction timing constraints. As presented in Attachment 1 and this order, the Department recommends Council amend the timing constraints associated with landowner notice and consultation with ODA to allow for additional flexibility in timing of preconstruction compliance. Comments on the DPO raised concerns that removing the timing constraint for landowner notice would increase the risk of health and safety impacts resulting from helicopter use. Certificate holder response to comments proposed a 3-day landowner notice would be sufficient to preserve the flexibility of the construction process and would create a more adaptable approach for the construction team to work with adjacent landowners on a schedule that is adaptable to the needs of everyone, including impacted landowners. Council concurred with the 3-day landowner notice. B2HAMD1 DPO Comments Stop B2H 2023-07-18, pp. 13-14; B2HAMD1 DPO Certificate Holder Responses to RFA1 DPO Public Comments 2023-07-19, pp. 21-25; Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO.

²¹⁴ Department notes that in the Final Order on ASC, the provisions outlined in the Helicopter Use Plan condition were based from certificate holder representations and under OAR 345-025-0006(10), the Council must include, as conditions in the site certificate, all representations in the site certificate application and supporting record the Council deems to be binding commitments made by an applicant/certificate holder. Therefore, because the Helicopter Use Plan was imposed based upon a representation and not necessary to meet the Public Services standard, it is appropriate for the certificate holder to modify the condition as long as the substantial representation remains in effect.

1 compliance with the approved Helicopter Use Plan. The Helicopter Use Plan shall identify or
2 provide:

- 3 a. The type of helicopters to be used (all helicopters must be compliant with the noise
4 certification and noise level limits set forth in 14 CFR § 36.11);
- 5 b. The duration of helicopter use;
- 6 c. Approximate helicopter routes to be used;
- 7 d. Protected areas and recreation areas within two miles of the approximate helicopter
8 routes;
- 9 e. Roads or residences over which external loads will be carried;
- 10 f. Multi-use areas and light-duty fly yards containing helipads shall be located: (i) in areas
11 free from tall agricultural crops and livestock; (ii) at least 500 feet from organic
12 agricultural operations; and (iii) at least 500 feet from existing dwellings on adjacent
13 properties;
- 14 g. Flights shall occur only between sunrise and sunset;
- 15 ~~h. At least 30 days~~ **At least 3 days** prior to initiating helicopter operations at any multi-use
16 area or light-duty fly yard, the certificate holder shall contact adjacent property owners
17 within 1,000 feet of the relevant multi-use area or light-duty fly yard;
- 18 ~~i. h. At least 30 days prior to initiating~~ **Prior to** helicopter operations, the certificate holder
19 shall consult with the Oregon Department of Aviation regarding the preparation and
20 posting of notices to airmen regarding the location and nature of work being performed.
21 The notice will be posted at each of the public airports in the vicinity of the facility to
22 alert other aviators of the location and timing of facility-related helicopter construction
23 activities; and
- 24 ~~j. i.~~ **The** certificate holder shall maintain a customer service telephone line to address,
25 among other things, complaints regarding helicopter operations.

26 [GEN-PS-01; Final Order on ASC, AMD1]

27
28 The changes proposed in RFA1 would not affect the location of approved multi-use areas or
29 light-duty fly yards and is not expected to significantly impact or alter helicopter use during
30 construction or operation of the facility.

31
32 Because the proposed RFA1 site boundary additions are not expected to significantly alter or
33 expand helicopter use during construction or operation of the facility, and because previously
34 imposed conditions would ensure that structures constructed and work performed within the
35 site boundary additions proposed in RFA1 would not create hazards to air navigation, the
36 Department recommends the Council continue to rely on its previous findings.

37
38 *III.M.1.i Fire Protection*

39
40 In the *Final Order on the ASC*, the Council imposed Public Services Condition 6 (Condition GEN-
41 PS-02), which requires certificate holder to construct the facility in compliance with a Fire
42 Prevention and Suppression Plan, and as discussed in Section III.N. of this order, previously
43 imposed Public Services Condition 7 (Condition GEN-PS-03), which required ~~ds~~ the facility to
44 operate in compliance with a Wildfire Mitigation Plan, is now recommended as Wildfire

1 Prevention and Risk Mitigation Conditions 1 and 2. The Council found that, subject to
2 compliance with ~~these applicable~~ conditions, the construction and operation of the facility was
3 not likely to result in significant adverse impacts to the ability of public and private fire
4 protection providers to provide fire response services within the analysis area.^{215, 216}
5

6 On federal land, fire protection services are provided by the federal agency that administers the
7 land, for the facility, administering agencies are the Department of the Navy, Bureau of Land
8 Management (BLM) and United States Forest Service (USFS). The Oregon Department of
9 Forestry (ODF) provides fire protection services for private and state-owned forest and range
10 lands within its fire protection districts. Fire protection services on other lands are provided by
11 Rangeland Fire Protection Associations (RFPA), Rural Fire Protection Districts (RFPD), and local
12 fire districts and agencies.
13

14 The proposed Little Juniper alternative is located in an area that is served by the Lone Rural Fire
15 Protection District. Most of True Blue Gulch alternative is located in ODF's Northeast Fire
16 Protection District. A small portion of the True Blue Gulch alternative and the Durbin Quarry
17 alternative are located within lands served by the Burnt River Rangeland Fire Protection
18 Association.
19

20 During construction of the facility, fire risks include sparks from construction equipment or
21 vehicles and improper disposal of cigarettes or matches, and unauthorized fires for cooking or
22 other activities. Similar risks would be associated with maintenance activities during operation
23 of the facility. To reduce these risks, and by extension, potential impacts on fire service
24 providers, the Council previously imposed Public Services Condition 6 (Condition GEN-PS-02)
25 which requires the certificate holder to conduct all work during construction of the facility in
26 compliance with a Department-approved Fire Prevention and Suppression Plan. The plan must
27 describe protective measures including:
28

- 29 • Wildfire training for onsite workers and facility personnel conducted by individuals that
30 are National Wildfire Coordination Group and Federal Emergency Management Agency
31 certified;
- 32 • Specific seasonal work restrictions;
- 33 • Onsite fire-fighting equipment and necessary fire protection resources based on a
34 documented evaluation of reasonably available sources related to wildfire risk and
35 sensitive seasonal conditions such as high temperatures, drought and high winds.
36

²¹⁵ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 624 of 10586.

²¹⁶ Since issuance of the *Final Order on the ASC*, Council adopted a new standard, Wildfire Prevention and Risk Mitigation (OAR 345-022-0115). In this order, the Department recommends Public Services Condition 7 be ~~amended-removed~~ to be imposed under the Wildfire Prevention and Risk Mitigation standard, but substantively includes the same requirements as the previously imposed condition.

1 The plan must also describe the fire districts and rural fire protection districts that will provide
2 emergency response services during construction and include copies of any agreements
3 between the certificate holder and the districts related to that coverage.
4

5 The certificate holder has not yet finalized its Fire Prevention and Suppression Plan (Final Order
6 on ASC Attachment U-3), but the Council’s approved draft plan states that training would cover
7 the proper use of extinguishers and equipment and measures to take in the event of a fire.
8 Training would also cover smoking restrictions and fire rules.²¹⁷
9

10 According to the Council-approved draft plan (Final Order on ASC Attachment U-3), any
11 construction equipment operating with an internal combustion engine would be equipped with
12 federally-approved spark arresters. Spark arresters are not required on trucks, buses, and
13 passenger vehicles (excluding motorcycles) equipped with an unaltered muffler or on diesel
14 engines equipped with a turbocharger. Motorized equipment and vehicles and would not be
15 allowed outside of designated work areas.²¹⁸
16

17 Each construction vehicle would be required to carry at least one long-handled shovel, a
18 double-bit ax or Pulaski, a chemical fire extinguisher with a rating of at least 5B, and a system
19 capable of spraying 20-50 gallons of water. Larger water supplies (300-500g) for fire
20 suppression would be made available as conditions warrant. Persons operating power saws and
21 grinders would also be required to carry a shovel and extinguisher. One 5-gallon back-up pump
22 will be required with each welding unit in addition to the standard fire equipment required in
23 all vehicles.²¹⁹ Fuel trucks would be required to carry a large fire extinguisher with a minimum
24 30 BC rating. Power-saw refueling will be done in an area that has first been cleared of material
25 that could catch fire.²²⁰ All work areas would be assigned a fire watch during breaks and for
26 three hours after power driven machinery has ceased operations for the day.²²¹ All work within
27 the site boundary additions proposed in RFA1 would be subject to the approved Fire Prevention
28 and Suppression Plan.
29

30 During operation of the facility, fire risks from the transmission line include ignition from faults
31 caused by vegetation or wildlife coming into contact with conductors or other equipment
32 failure. These risks may be more severe during under dry and windy conditions. There are also
33 fire-risks associated with vandalism and unauthorized access of the right-of-way. Fire
34 protection providers responding to fires in the vicinity of the transmission line may also need
35 the line to be deenergized to minimize safety risks. The Council previously imposed Public
36 Services Condition 7 (Condition GEN-PS-03), which requires the facility to operate in compliance
37 with a Wildfire Mitigation Plan that provides a wildfire risk assessment and establishes actions
38 and ~~establishes~~ preventative measures based on the assessed operational risk from and of

²¹⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10513 of 10586.

²¹⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10513 of 10586.

²¹⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10513-10514 of 10586

²²⁰ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10514 of 10586.

²²¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10514 of 10586.

1 wildfire in each county affected by the facility. As part of RFA1, the certificate holder provided
2 its 2022 Wildfire Mitigation Plan, which has been evaluated and approved by the PUC.^{222, 223}

3
4 As noted in Section III.N, the Wildfire Mitigation Plan describes field personnel practices,
5 operational strategies, inspection protocols, vegetation management activities, and wildfire
6 response activities that will be used to mitigate wildfire risk at all transmission and distribution
7 lines operated by the certificate holder, including the facility.

8
9 *III.M.1.j Police Protection*

10
11 In the *Final Order on the ASC*, Council imposed Public Services Condition 5 (Condition PRE-PS-
12 04), which requires the certificate holder to conduct all work in compliance with an approved
13 Environmental and Safety Training Plan, which in part, specifies measures for securing multi-use
14 areas and work sites when not in use to address the potential for construction sites to become
15 targets for theft and vandalism.

16
17 As described above, the Council also imposed Public Services Condition 2 (Condition PRE-PS-
18 02), which requires the certificate holder to develop and comply with a Transportation and
19 Traffic Plan specifying measures to avoid, minimize and mitigate impacts to law enforcement
20 agencies due to the expected increase in construction- related traffic.

21
22 Subject to compliance with these conditions, the Council found that the construction and
23 operation of the facility is not likely to result in significant adverse impacts to the ability of
24 public and private police and public safety providers to provide services within the analysis
25 area.²²⁴ Both of the previously imposed conditions would apply to the changes proposed in
26 RFA1.

27
28 The scope and extent of construction activities involved with constructing the facility, with the
29 changes proposed in RFA1, would be similar to those evaluated In the *Final Order on the ASC*.
30 As a result, no significant changes to the number of workers required during, or duration of,
31 construction of the facility, or the associated demand on police services, is expected. In
32 addition, the Council previously imposed conditions to ensure that impacts on police protection
33 services are minimized. Accordingly, the Department recommends that the Council continue to
34 rely on its previous findings and conditions.

35
36 **III.M.2. Conclusions of Law**

37

²²² Oregon Public Utilities Commission Order 22-312 (August 26, 2022),
<https://apps.puc.state.or.us/orders/2022ords/22-312.pdf>

²²³ Since issuance of the *Final Order on the ASC*, Council adopted a new standard, Wildfire Prevention and Risk Mitigation (OAR 345-022-0115). In this order, the Department recommends Public Services Condition 7 be ~~amended-removed~~ to be imposed under the Wildfire Prevention and Risk Mitigation standard, but substantively includes the same requirements as the previously imposed condition.

²²⁴ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 610 of 10586.

1 Based on the foregoing analysis, and subject to compliance with the existing and recommended
2 amended site certificate conditions described above, the Department recommends the Council
3 find that facility components to be located within the proposed RFA1 site boundary additions
4 are not likely to result in significant adverse impacts to the ability of public and private
5 providers to provide the services listed in OAR 345-022-0110.
6

7 **III.N. WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115**
8

9 *(1) To issue a site certificate, the Council must find that:*

10
11 *(a) The applicant has adequately characterized wildfire risk within the analysis*
12 *area using current data from reputable sources, by identifying:*

13
14 *(A) Baseline wildfire risk, based on factors that are expected to remain fixed*
15 *for multiple years, including but not limited to topography, vegetation,*
16 *existing infrastructure, and climate;*

17
18 *(B) Seasonal wildfire risk, based on factors that are expected to remain fixed*
19 *for multiple months but may be dynamic throughout the year, including but*
20 *not limited to, cumulative precipitation and fuel moisture content;*

21
22 *(C) Areas subject to a heightened risk of wildfire, based on the information*
23 *provided under paragraphs (A) and (B) of this subsection;*

24
25 *(D) High-fire consequence areas, including but not limited to areas containing*
26 *residences, critical infrastructure, recreation opportunities, timber and*
27 *agricultural resources, and fire-sensitive wildlife habitat; and*

28
29 *(E) All data sources and methods used to model and identify risks and areas*
30 *under paragraphs (A) through (D) of this subsection.*

31
32 *(b) That the proposed facility will be designed, constructed, and operated in*
33 *compliance with a Wildfire Mitigation Plan approved by the Council. The*
34 *Wildfire Mitigation Plan must, at a minimum:*

35
36 *(A) Identify areas within the site boundary that are subject to a heightened*
37 *risk of wildfire, using current data from reputable sources, and discuss data*
38 *and methods used in the analysis;*

39
40 *(B) Describe the procedures, standards, and time frames that the applicant*
41 *will use to inspect facility components and manage vegetation in the areas*
42 *identified under subsection (a) of this section;*
43

1 (C) Identify preventative actions and programs that the applicant will carry
2 out to minimize the risk of facility components causing wildfire, including
3 procedures that will be used to adjust operations during periods of heightened
4 wildfire risk;

5
6 (D) Identify procedures to minimize risks to public health and safety, the
7 health and safety of responders, and damages to resources protected by
8 Council standards in the event that a wildfire occurs at the facility site,
9 regardless of ignition source; and

10
11 (E) Describe methods the applicant will use to ensure that updates of the plan
12 incorporate best practices and emerging technologies to minimize and
13 mitigate wildfire risk.

14
15 (2) The Council may issue a site certificate without making the findings under
16 section (1) if it finds that the facility is subject to a Wildfire Protection Plan
17 that has been approved in compliance with OAR chapter 860, division 300.

18
19 (3) This Standard does not apply to the review of any Application for Site
20 Certificate or Request for Amendment that was determined to be complete
21 under OAR 345-015-0190 or 345-027-0363 on or before the effective date of
22 this rule.

23 24 **III.N.1. Findings of Fact**

25
26 The Wildfire Prevention and Risk Mitigation standard requires the Council to find the certificate
27 holder has adequately characterized wildfire risk associated with a facility; and that the facility
28 would be operated in compliance with a Council-approved wildfire mitigation plan; or the
29 facility is subject to a Wildfire Protection Plan approved by the Oregon Public Utility
30 Commission (OPUC). Under OAR 345-022-0115(3), the standard does not apply to the review of
31 an ASC that was determined to be complete prior to July 29, 2022.²²⁵ For this reason the
32 standard did not apply to the review of the ASC for this facility; however, it is applicable to the
33 areas added to the site boundary in proposed RFA1, which was submitted on June 8, 2023. The
34 analysis area to evaluate potential wildfire risks is the area within and extending ½-mile from
35 the site boundary.²²⁶

36
37 OAR 345-022-0115(1) includes requirements for mapping baseline and seasonal fire risk based
38 on reputable sources, the identification of areas subject to heightened fire risk, and high fire
39 consequence areas. Sub (1) of the rule also outlines the contents required to be included in a
40 Wildfire Mitigation Plan. These rule provisions follow the OPUC rules designated under OAR

²²⁵ The ASC was deemed complete on September 21, 2018. B2HAPPDoc1 ASC Determination of Complete Application 2018-09-21.

²²⁶ OAR 345-001-0010(35)(c).

1 chapter 860, division 300. When Council drafted and approved its Wildfire Mitigation standard
2 under OAR 345-022-0115(2), the Council established that it may allow for the issuance of a site
3 certificate without making the findings under section (1) of the rule if Council finds that the
4 facility is subject to a Wildfire Mitigation Plan (WMP) that has been approved by the OPUC. The
5 rules that designate the filing, review, approval requirements for OPUC WMP's are under OAR
6 chapter 860, division 300, which were the requirements that Council referred to when drafting
7 rule language for its Wildfire Mitigation standard.

8
9 Under OAR 345-022-0115(2), the Department recommends Council find that it does not need
10 to make findings under OAR 345-022-0115(1) because the facility²²⁷ is subject to a Wildfire
11 Protection Plan that has been approved in compliance with OPUC rules, and the OPUC has
12 approved the certificate holder's WMP. To support this recommendation, the Department
13 discusses ~~in~~ the following below:

- 14 • Procedural History for Wildfire Mitigation Plans (WMP) in Oregon and Certificate
15 Holder WMP;
- 16 • Summary of *Final Order on ASC Findings* for WMP;
- 17 • Summary of Findings for RFA1 to Support OAR 345-022-0115(2);
- 18 • Results of Wildfire Risk Assessment for Facility and OPUC-Approved WMP;
- 19 • Other Applicable Conditions Related to Operational Fire Risk.

20
21 Also presented below is the Department's recommendation that Council replace Public Services
22 Condition 7, which addresses the WMP for the facility, as Wildfire Prevention and Risk
23 Mitigation Condition 1 and 2, with condition language to facilitate implementation. As noted
24 below and discussed in Section III.M.1.i, Fire Protection of this order, the recommended OPUC
25 WMP applies to the operation of the facility, however, previously imposed Public Services
26 Condition 6 requires the submission and adherence to a Fire Prevention and Suppression Plan
27 during construction of the facility.

28
29 *III.N.1.a Procedural History for Wildfire Mitigation Plans (WMP) in Oregon and Certificate*
30 *Holder WMP:*

31

²²⁷ Department notes that under OAR 860-300-0001(1), Scope and Applicability of OPUC Rules for Wildfire Mitigation Plans, states "The rules in this division prescribe the filing requirements for risk-based Wildfire Mitigation Plans filed by a Public Utility that provides electric service in Oregon pursuant to ORS 757.005." The certificate holder is a Public Utility that provides electric service in Oregon, and therefore must comply with the Wildfire Mitigation Plan (WMP) rules. Which under OAR 860-300-0020(1)(a)(B), Wildfire Mitigation Plans and Updates, a WMP must identify areas that are subject to a heightened risk of wildfire within the service territory of the Public Utility, *and outside the service territory of the Public Utility but within the Public Utility's right-of-way for generation and transmission assets.* [Emphasis added] RFA1 Section 7.1.10 and in the 2022 WMP Section 3.2.1 and Section 3.2.2.1, certificate holder states that it included the facility, including the areas added to the site boundary proposed in RFA1, in its wildfire modeling (with a 1.2-mile buffer - 0.62 miles on both sides of ROW) and that the WMP applies to the facility.

- 1 • March 2020 - Executive Order 20-04 (EO 20-04) issued which directs the OPUC to
2 evaluate electric companies' risk-based wildfire protection plans and planned
3 activities.
- 4 • July 2021 - Senate Bill (SB) 762 (2021) established standards for electric utility
5 Wildfire Mitigation Plans.
- 6 • December 2021 – Effective date for OAR 860-300-0020 which includes the minimum
7 requirements for Wildfire Mitigation Plan filings, as well as the process for OPUC
8 approval of the plans.
- 9 • January 5, 2022 – During EFSC contested case proceeding 2022 WMP added to the
10 record for the facility to address concerns about wildfire.²²⁸
- 11 • April 28, 2022 – OPUC approved Idaho Power's 2022 Wildfire Mitigation Plan (dated
12 Dec. 2021) on the condition that by June 28, 2022 the certificate holder file a
13 Supplement to the 2022 WMP which must include the items identified by the OPUC
14 in its order. Order No. 22-133.²²⁹
- 15 • July 29, 2022 – Effective date for EFSC's Wildfire Prevention and Risk Mitigation
16 standard. Under OAR 345-022-0115(3), the standard did not apply to the facility
17 ASC.
- 18 • August 26, 2022 – OPUC approved the 2022 WMP Supplement. Order No. 22-312
- 19 • September 27, 2022 – EFSC approved facility ASC and issues site certificate for
20 facility. *Final Order on ASC* adopted Public Services Condition 7, which addresses the
21 WMP for the facility, under the Public Services standard because Wildfire standard
22 was not applicable to ASC.
- 23 • June 26, 2023 – OPUC approved certificate holder's 2023 Wildfire Mitigation Plan.
24 Order No. 23-222.²³⁰

25
26 *III.N.1.b Summary of Final Order on ASC Findings for WMP:*

27
28 *Final Order on ASC and Attachment 6: Contested Case Order (CCO) as Amended and Adopted of*
29 *summary of findings of facts for WMP related to operational fire risk and mitigation measures*
30 *that apply to the facility and remain applicable to the proposed site boundary additions:*

- 31
- 32 • The WMP includes a specific fire potential index (FPI) tool that incorporates fire
33 weather into the decision-making tool to reduce fire threats and risks. The FPI
34 reflects key variables, such as the state of native vegetation across the service
35 territory, fuels, and weather. Each variable is assigned a numeric value, and those
36 individual numeric values are summed to generate an FPI score which then are used
37 to characterize fire risk as Green, Yellow, or Red based on the FPI score. A Green FPI

²²⁸ B2HAPPD0c1023 IPC Exhibits to Sur-sur-rebuttal Testimony of Dockter_Till_2022-01-05.

²²⁹ All of the OPUC proceedings on its annual review of utilities wildfire mitigation plans are available on its docket. The docket for Idaho Power's (certificate holder) wildfire mitigation plans is Docket No: UM 2209.

²³⁰ <https://apps.puc.state.or.us/orders/2023ords/23-222.pdf> Accessed 08-03-2023. Request from Council during its' review of the RFA1 DPO to include reference to the OPUC-approved 2023 WMP. Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO.

- 1 score indicates low potential for a large fire to develop and spread, a Yellow score
2 indicates an elevated potential, and a Red score indicates a higher potential for fire.
- 3 • 2022 WMP considered the route of the facility and identified two locations along the
4 route as having an increased wildfire risk (Yellow risk zone – YRZ or Tier 2) and no
5 areas of higher risk (Red risk zone – RRZ or Tier 3).²³¹ WMP includes a Public Safety
6 Power Shutoff Plan (PSPS Plan) which allows certificate holder to proactively de-
7 energize its electrical facilities in identified areas of extreme wildfire risk to reduce
8 the potential of those electrical facilities becoming a wildfire ignition source or
9 contributing to the spread of wildfires. Power shutoff would be initiated if it is
10 determined that a combination of critical conditions indicate the transmission and
11 distribution system at certain locations are at an extreme risk of being an ignition
12 source and wildfire conditions are severe enough for the rapid growth and spread of
13 wildfire.²³²
 - 14 • Even though the facility is not constructed, certificate holder indicates the WMP will
15 apply to the facility.²³³
- 16

17 *III.N.1.c Summary of Findings for RFA1 to Support OAR 345-022-0115(2)*

18

19 RFA1 Attachment 7-16 includes the certificate holder’s 2022 WMP approved by OPUC on
20 August 23, 2022, which includes the WMP Supplement that was provided to and approved by
21 OPUC. The information in the 2022 WMP Supplement that OPUC approved was:²³⁴

- 22 1. A narrative discussion of certificate holder cost and risk mitigation balancing
23 assumptions that went into the 2022 WMP.
 - 24 2. A strategy for maturing certificate holder’s analytical approach to cost and risk
25 mitigation balancing in the 2023 WMP.
 - 26 3. Data delineating Oregon risk areas and Oregon projects with associated costs.
- 27

28 WMP Wildfire Risk Modeling Methodologies:^{235, 236}

29

²³¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 615-617; Attachment 6: Contested Case Order (CCO) as Amended and Adopted, pages 98-101, 227-242.

²³² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 615-617; Attachment 6: Contested Case Order (CCO) as Amended and Adopted, pages 99-101 and 230-231.

²³³ Attachment 6: Contested Case Order (CCO) as Amended and Adopted, page 99.

²³⁴ OPUC Order 22-312 IPC 2022 WMP Supplement Approval 08-23-2022.

<https://www.oregon.gov/puc/edockets/pages/default.aspx> Accessed by Department 04-04-2023.

²³⁵ B2HAMD1 RFA1 2023-06-08. Attachment 7-16 (redline WMP PDF page 23/259), Section 3.2

²³⁶ The evaluation of this section summarizes information provided in certificate holder’s 2022 WMP as it was submitted on the record for the facility for EFSC, however, at Council’s request, the Department highlights that after the issuance of the DPO, the OPUC approved the certificate holder’s 2023 WMP. An online review of the 2023 WMP indicates that the wildfire risk methodologies, conclusions, and preventative measures in the 2023 WMP are substantially similar to the 2022 WMP. 2023 WMP from OPUC Docket UM 2209 available here: <https://edocs.puc.state.or.us/efdocs/HAQ/um2209haq151044.pdf>. Accessed 08-03-2023. Further, under Recommended Wildfire Prevention and Risk Mitigation Conditions 1 and 2, the certificate holder will submit the most recent WMP prior to operation of the facility and submit OPUC-approved WMP’s annually to ODOE/EFSC.

1 In preparation of the 2022 WMP, certificate holder used an external consultant that specializes
2 in assessing and quantifying the threat of wildfire through a risk-based methodology that
3 leverages weather modeling, wildfire spread modeling, and Monte Carlo simulation. This
4 methodology is also used by the California Public Utilities Commission (CPUC) and other utilities
5 in Oregon, Idaho, Nevada, and Utah have utilized similar modeling to identify and quantify
6 wildfire risk.

7
8 The simplistic WMP wildfire risk methodology formula is:

9
10
$$\text{Wildfire Risk} = \text{Fire Probability} \times \text{Consequence}^{237}$$

11
12 Where fire probability takes into consideration historical weather, topography, fuel types
13 present, and fuel moisture content. Consequence is the number of structures (i.e., homes,
14 businesses, other man-made structures) that may be impacted by a wildfire. Wildfire risk is fire
15 probability multiplied by the consequence, therefore the highest wildfire risk areas
16 are those where the landscape, vegetation and weather are conducive for fires and there is
17 more dense man-made infrastructure.

18
19 OAR 860-300-0030 designates the required information that must be included in a utilities risk
20 analysis, and specifies that a public utility must include in its Wildfire Mitigation Plan risk
21 analysis that describes wildfire risk within the utility's service territory and outside the service
22 territory of the utility but within the utility's right of way for generation and transmission
23 assets.²³⁸ Some of the required information designated in the rule are defined categories of
24 overall wildfire risk, baseline wildfire risk, seasonal wildfire risk, risks to residential areas served
25 by the utility, and a narrative of all data sources it uses to model topographical and
26 meteorological components of its wildfire risk as well as any wildfire risk related to the utility's
27 equipment.

28
29 Summary of WMP Wildfire Risk Modeling Steps:²³⁹
30

²³⁷ Consequence is defined as "Number of structures (i.e., homes, businesses, other man-made structures) that may be impacted by a wildfire." These impacts to structures are a proxy for potential impacts to the individuals who would be in or use those structures. "[C]onsequence is the negative impacts to different assets at risk. Assets at risk that are typically prioritized when looking at utility caused fires are loss of life and loss of structures, and those were the two assets at risk that were considered consequences in the risk modeling that was conducted by the certificate holder to inform its Wildfire Mitigation Plan. B2HAMD1 DPO Certificate Holder Responses to RFA1 DPO Public Comments 2023-07-19, Attachment A, Dr. Christopher Lautenberger, expert witness in the Evidentiary Hearing for certificate holder's OPUC Petition for Certificate of Public Convenience and Necessity (CPCN).

²³⁸ In its June 6, 2023 staff report recommending OPUC approve the certificate holder's 2023 WMP, in reference to OPUC WMP rulemaking efforts, OPUC staff states, "[t]his rule establishes standards Public Utilities must follow to identify areas within their service territories that are High Fire Risk Zones. The rule is not prescriptive in stating which models or sources of information a utility must use, but instead requires the utility identify sources of information and models used in the plan." OPUC Docket UM 2209 <https://edocs.puc.state.or.us/efdocs/HAU/um2209hau113615.pdf> page 5. Accessed 06-13-2023.

²³⁹ B2HAMD1 RFA1 2023-06-08. Attachment 7-16 (redline WMP PDF page 144/259), Section 3.2.1.

- 1 1. Fire weather climatology was developed utilizing the Weather Research and Forecasting
2 (WRF) model to recreate historical days of fire weather significance across service
3 territory.
- 4 2. Estimates of seasonal variation in live fuel moisture generated by analyzing historical
5 fuel measurements and/or weather station observations.
- 6 3. Data from the federal LANDFIRE program was utilized to provide high-resolution fuel
7 rasters for use in fire spread modeling.
- 8 4. The above WRF climatology, live fuel moisture, and LANDFIRE data, are used to drive a
9 Monte Carlo fire spread modeling analysis. The Monte Carlo simulation is accomplished
10 by randomly selecting an ignition location and a randomly selected day from the fire
11 weather climatology developed in step 1 above. Ignition locations were limited in the
12 model to be within a two-kilometer (1.24 miles) buffer surrounding Idaho Power’s
13 overhead transmission and distribution lines (i.e., 1 kilometer or 0.62 miles on either
14 side). Transmission lines jointly owned by the certificate holder and PacifiCorp were
15 included in the analysis. Furthermore, Boardman-to-Hemingway (B2H) 500 kilovolt (kV)
16 line facility was included in this analysis. For each combination of ignition location and
17 time of ignition, fire progression was then modeled for 6 hours and fire impacts to
18 structures were quantified using structure data. This was repeated across the certificate
19 holders service territory for millions of combinations of ignition location and time of
20 ignition.
- 21 5. The Monte Carlo results are processed, and GIS based data depicting fine grained
22 wildfire risk are developed and turned into wildfire risk maps.

23
24 *III.N.1.d Results of Wildfire Risk Assessment for Facility and OPUC-Approved WMP*

25
26 OAR 860-300-0020 establishes OPUC’s Wildfire Protection Plan Filing Requirements. Under OAR
27 860-300-0020(1)(a)(A) and (B), a WMP must identify areas that are subject to a heightened risk
28 of wildfire, including determinations for such conclusions, and are:

- 29
- 30 (A) Within the service territory of the utility, and
- 31 (B) Outside the service territory of the utility but within the utility's right-of-way for
32 generation and transmission assets.²⁴⁰
- 33

34 As noted above, the 2022 WMP wildfire risk modeling considered the permitted, yet not
35 constructed facility, and identified two locations along the route as having an increased wildfire
36 risk (Yellow risk zone – YRZ or Tier 2) and no areas of higher risk (Red risk zone – RRZ or Tier
37 3).²⁴¹ The resulting risk tiers reflect risk *relative* to certificate holder’s service territory only and

²⁴⁰ Department reiterates that although OPUC rules only require wildfire risk modeling for a utilities ROW outside its service territory, certificate holder modeled ignition locations within a two-kilometer (1.24 miles) buffer surrounding certificate holder’s overhead transmission and distribution lines (i.e., 1 kilometer or 0.62 miles on either side).

²⁴¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 615-617; Attachment 6: Contested Case Order (CCO) as Amended and Adopted, pages 98-101, 227-242; and B2HAMD1 RFA1 2023-06-08. Attachment 7-16 (redline WMP PDF page 150/259), Section 3.2.2.1.

1 *not absolute* risk within all the areas outside the certificate holder’s service territory.²⁴²
2 [Emphasis added]

3
4 Certificate holder represents in the record of the ASC and in the WMP submitted with RFA1,
5 that the methodologies, programs, and mitigation actions in the WMP will apply to the facility
6 once it is constructed including the site boundary additions proposed in RFA1.²⁴³ These
7 measures and programs include the Public Safety Power Shutoff Plan (PSPS Plan) discussed
8 above and in the *Final Order on ASC*, annual updates by its Load Serving Operations (LSO)
9 department of the Fire Season Temporary Operating Procedure, and a Red Risk Zone
10 Transmission Operational Strategy. Other operational wildfire mitigation measures in the WMP
11 include Transmission Asset Management Programs including an annual Aerial Visual Inspection
12 Program, Ground Visual Inspection Program, Detailed Visual (High-resolution Photography)
13 Inspection Program, Wood Pole Inspection and Treatment Program, Cathodic Protection and
14 Inspection Program for select steel towers, and Thermal Imaging (Infra-red) Camera Inspections
15 in RRZs. The WMP also includes a construction Wildland Fire Preparedness and Prevention Plan
16 for certificate holder personnel and its construction contractors.

17
18 Under OAR 860-300-0020(2) Wildfire Mitigation Plans must be updated annually and filed with
19 the OPUC no later than December 31 of each year, and public utilities are required to provide a
20 plan supplement explaining any material deviations from the applicable Wildfire Mitigation Plan
21 acknowledged by the OPUC. OPUC staff acknowledge that WMPs are intended to be updated,
22 iterative, and adaptable.²⁴⁴ OPUC orders approving WMPs, often include and adopt staff
23 recommendations in an attached staff report, OPUC recommendations “look ahead” to the
24 next annual submission of the WMP and require additional information in that WPM.²⁴⁵

25
26 On April 28, 2022 OPUC approved the certificate holder’s 2022 Wildfire Mitigation Plan on the
27 condition that by June 28, 2022 the certificate holder file a Supplement to the 2022 WMP, and
28 then on August 26, 2022 OPUC approved the 2022 WMP Supplement. On June 26, 2023, the

²⁴² B2HAMD1 RFA1 2023-06-08. Attachment 7-16 (redline WMP PDF page 145/259), Section 3.2.2.

²⁴³ B2HAMD1 RFA1 2023-06-08. Section 7.1.0 and -Attachment 7-16, Section 3.2.2.1.

²⁴⁴ From April 14, 2022 OPUC staff report: “Staff considers WMPs as ongoing living documents or plans that are more a “journey” and less a “destination.” Future plans will be shaped by new technology, greater understanding of risks, climate change, and energy policy. Minimum requirements will likely change and expectations of providing more details used in risk analysis, cost benefit analysis and new technologies will expand.” OPUC Order 22-133 IPC 2022 WMP Approval 2022-04-28, page 13. <https://apps.puc.state.or.us/orders/2022ords/22-133.pdf> Accessed by Department on 06-12-2023.

²⁴⁵ Utilities’ annual Wildfire Mitigation Plans under the OPUC’s jurisdiction are intended to be living documents, and changes to them are intended to be iterative. The OPUC approval for the 2023 WMP recommended additional actions that the certificate holder should take when preparing its 2024 Wildfire Mitigation Plan, the OPUC and other stakeholders, including STOP B2H, will continue to have the opportunity to participate in these annual WMP updates and provide comments and suggestions for updated wildfire mitigation strategies in Docket UM 2209. To keep the Council informed of the development of these annual plans, Recommended Wildfire Prevention and Risk Mitigation Condition 2 will require the submission of these approved plans and the OPUC approval. B2HAMD1 DPO Comments Stop B2H 2023-07-18, pp 7-8; B2HAMD1 DPO Certificate Holder Responses to RFA1 DPO Public Comments 2023-07-19, p. 14-15.

1 OPUC approved the certificate holder's 2023 WMP. Under OAR 345-022-0115(2), the
2 Department recommends Council find that the Wildfire Prevention and Risk Mitigation
3 standard is met, subject to recommended site certificate conditions, for the site boundary
4 additions proposed in RFA1 and for the facility, -and Council issue an amended site certificate
5 without making the findings under section OAR 345-022-0115(1) because it finds that the
6 facility is subject to a Wildfire Protection Plan that has been approved in compliance with OAR
7 chapter 860, division 300.²⁴⁶

8
9 In the *Final Order on ASC*, Council adopted Public Services Condition 7 (GEN-PS-03), presented
10 below with recommended deleted text. This condition was established in the Proposed Order
11 on ASC and further modified during the contested case under the Council's Public Services
12 standard because the Council's Wildfire Prevention and Risk Mitigation standard was not
13 applicable to the facility at that time, and the OPUC WMP and the WMP Supplement had not
14 yet been approved by OPUC. The Department recommends Council amend Public Services
15 Condition 7 by imposing the requirements under this standard, under two recommended
16 conditions, as presented below.

17
18 **Recommended Wildfire Prevention and Risk Mitigation Condition 1 and 2 (see below):**

19 ~~**Public Services Condition 7: The certificate holder shall:**~~

- 20 ~~a. Prior to operation, provide a copy of its Wildfire Mitigation Plan to the Department and~~
21 ~~each affected county which provides a wildfire risk assessment and establishes action~~
22 ~~and preventative measures based on the assessed operational risk from and of wildfire~~
23 ~~in each county affected by the facility.~~
24 ~~b. During operation, the certificate holder shall update the Wildfire Mitigation Plan on an~~
25 ~~annual basis, or frequency determined acceptable by the Department in consultation~~
26 ~~with the Oregon Public Utilities Commission.~~
27 ~~c. During operation, for the service territories the facility would be located within, the~~
28 ~~certificate holder shall provide to each of the fire districts and rural fire protection a~~
29 ~~contact phone number to call in the event a district needs to request an outage as part~~
30 ~~of a fire response.~~
31 ~~d. Any Wildfire Mitigation Plan required by the Oregon Public Utilities Commission shall be~~
32 ~~considered by EFSC as meeting the requirements of this condition.~~

33 ~~{GEN-PS-03} [DELETED]~~

34
35 Wildfire Prevention and Risk Mitigation Condition 1 substantively requires the same
36 information as the previously adopted Public Services Condition 7. Wildfire Prevention and Risk
37 Mitigation Condition 1 requires that the WMP, consistent with OAR 860-300-0020(1)(a)(A) and
38 (B), evaluate fire-related risks for the entire facility in all five counties in Oregon, regardless of
39 certificate holder service territory or ownership of the facility. It also ensures that the required

²⁴⁶ OPUC Order 22-133 IPC 2022 WMP Approval 2022-04-28 <https://apps.puc.state.or.us/orders/2022ords/22-133.pdf> Accessed by Department on 06-12-2023, and OPUC Order 22-312 IPC 2022 WMP Supplement Approval 08-23-2022. <https://www.oregon.gov/puc/edockets/pages/default.aspx> Accessed by Department 04-04-2023. OPUC Order 21-222 2023 WMP <https://apps.puc.state.or.us/orders/2023ords/23-222.pdf> Accessed 08-03-2023.

1 mitigation measures included in the WMP apply to the entire facility in all five counties in
2 Oregon. Consistent with OAR 860-300-0020(2), recommended Wildfire Prevention and Risk
3 Mitigation Condition 2, requires that, during operation, in its annual report submitted to the
4 Department the certificate holder submit the most recently-OPUC-approved WMP with
5 evidence of the OPUC approval.

6
7 **Recommended Wildfire Prevention and Risk Mitigation Condition 1:**

- 8 a. Prior to and during operation, the OPUC-approved Wildfire Mitigation Plan (WMP)
9 shall:
10 i. Evaluate fire-related risks for the entire facility in all five counties in Oregon,
11 regardless of certificate holder service territory or ownership of the facility.
12 ii. Require procedures and mitigation measures, including the applicable
13 measures in the Public Safety Power Shutoff (PSPS) Plan, to apply to the
14 entire facility in all five counties in Oregon, regardless of certificate holder
15 service territory or ownership of the facility.
16 b. Prior to operation, certificate holder shall provide a copy of the most recent OPUC-
17 approved Wildfire Mitigation Plan that applies to the facility to the Department and
18 each affected county.

19
20 **Recommended Wildfire Prevention and Risk Mitigation Condition 2:** During operation,
21 on an annual basis consistent with the annual report under General Standard of Review
22 Condition 4, submit the most recent OPUC approved WMP and a copy of OPUC
23 approval.

24
25 *III.N.1.e Other Applicable Conditions Related to Operational Fire Risk*

26
27 Previously imposed site certificate conditions that address vegetative maintenance, inspections,
28 and fire risk mitigation that continue to apply to the facility and site boundary additions
29 proposed in RFA1 are;

- 30
31 • Fire Prevention and Suppression Plan (Public Services Condition 6): Requires the
32 certificate holder to finalize and implement fire prevention measures during
33 construction of the facility. Measures in the Fire Prevention and Suppression Plan(s)
34 include training for construction workers, seasonal work restrictions, onsite fire-
35 fighting equipment and necessary fire protection resources, and a description of the
36 fire districts and rural fire protection districts that will provide emergency response
37 services during construction and copies of any agreements between the certificate
38 holder and the districts related to that coverage.
39 • Vegetation Management Plan (Fish and Wildlife Condition 2): Provides practices,
40 protocols and management plans to manage wildfire risk. Vegetation management
41 would be conducted in compliance with the American National Standards Institute
42 (ANSI) Pruning Standards Best Management Practices for Utilities, Oregon Forest
43 Products Act, the U.S. Department of Labor Occupational Safety and Health

Administration (OSHA), and the North American Electric Reliability Council’s (NERC) Standard FAC-003-3 Transmission Vegetation Management Program (TVMP).²⁴⁷

- Right-of-Way Clearing Assessment (Land Use Condition 16): Methods for clearing vegetation within forested areas to reduce the risk that combustible materials that would come into contact with the conductors and ignite a fire.
- Organizational Expertise Condition 1: Requests that, during operation, certificate holder provide documentation of inspections for transmission line patrols/inspections, unscheduled emergency line patrols, aerial vegetation patrols, and comprehensive 10-year maintenance inspection conducted in accordance with its Transmission Maintenance and Inspection Plan and Transmission Vegetation Management Program (TMIP).

III.N.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the recommended site certificate conditions described above, the Department recommends Council find that the Wildfire Prevention and Risk Mitigation standard is met, subject to recommended site certificate conditions, for the site boundary additions proposed in RFA1 and for the facility, and Council issue an amended site certificate without making the findings under section OAR 345-022-0115(1) because it finds that the facility is subject to a Wildfire Protection Plan that has been approved in compliance with OAR chapter 860, division 300.

III.O. **WASTE MINIMIZATION: OAR 345-022-0120**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:

(a) The applicant’s solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

(b) The applicant’s plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) 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).

²⁴⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 615.

1 *However, the Council may apply the requirements of section (1) to impose*
2 *conditions on a site certificate issued for such a facility.*²⁴⁸

3
4 **III.O.1. Findings of Fact**

5
6 The proposed RFA1 site boundary additions will not result in substantive changes to the type or
7 amount of solid waste and wastewater generated during facility construction and operation.
8 Therefore, the Department recommends Council rely on its findings and conditions in the *Final*
9 *Order on ASC*, as referenced below.

10
11 *Solid Waste*

12
13 Facility construction would generate approximately 1,870 tons of solid waste including
14 containers, boxes, bags, sacks, packing materials, broken insulators, scrap conductor, empty
15 wire spools, and other miscellaneous non-hazardous paper, plastic or similar materials. As
16 discussed in Section III.M., *Public Services*, wastes not recycled would be disposed of in Finley
17 Buttes Landfill in Boardman and Baker County Landfill in Baker City.

18
19 Council previously imposed Waste Minimization Condition 1 (Condition GEN-WM-01) requiring
20 that, prior to construction, the certificate holder develop a Construction Waste Management
21 Plan that would implement waste reducing measures including training employees to segregate
22 and recycle recyclable materials. This condition would continue to apply to the facility, with
23 proposed RFA1 site boundary additions.²⁴⁹

24
25 During operations, the facility would generate an insignificant amount of solid waste, which
26 would include replaced equipment and components, packing materials, and soils.

27
28 *Wastewater*

29
30 Construction-related wastewater would predominately be generated during foundation
31 construction for transmission line towers, from concrete wash water. Concrete wash water
32 would include water with residual concrete, concrete associated liquids, and the wash water
33 from cleaning trucks, hoppers, and chutes. Washout liquids would generally be allowed to
34 evaporate or would be pumped out and properly disposed of by the construction contractor.
35 Washout liquids would not be discharged into storm drains, ditches, streams or other water
36 bodies. Concrete washout areas would be located in designated aboveground earthen berms or
37 straw bale enclosures lined with plastic, a storage tank, or other structure approved by the
38 engineer or inspector.

39

²⁴⁸ OAR 345-022-0120, effective May 15, 2007.

²⁴⁹ As presented in Attachment 1 of this order, the Department recommends Council amend Waste Minimization Condition 1 (Condition GEN-WM-01) to clarify the difference between requirements to be satisfied prior to construction (finalization of the plan) and during construction (reporting/documenting compliance).

1 Some foundations may require slurry to stabilize foundation shafts during drilling. Slurry fluids
2 would consist of a mixture of bentonite and water. Excess and degraded slurry fluids would be
3 contained in designated aboveground washouts similar to those described above for concrete.
4 The slurry fluids would be allowed to completely evaporate or they would be pumped out and
5 properly disposed of by the construction contractor. Slurry fluids would not be discharged into
6 storm drains, ditches, streams, or other water bodies.

7
8 Sanitary wastewater would also be generated during construction from portable toilets.
9 Wastewater associated with portable toilets will be disposed by a local contractor in
10 accordance with state law.²⁵⁰ The subcontractor would ensure that a sufficient number of
11 portable toilets are provided.

12 13 **III.O.2. Conclusions of Law**

14
15 Based on the foregoing analysis, and subject to compliance with the recommended amended
16 site certificate condition as presented in the draft amended site certificate, the Department
17 recommends the Council find that the certificate holder’s waste management plan is likely to
18 minimize generation of solid waste and wastewater in construction and the plan would result in
19 recycling and reuse of such wastes, and will manage the accumulation, storage, disposal and
20 transportation of wastes in a manner that will result in minimal adverse impacts to surrounding
21 and adjacent areas.

22
23 The Department recommends the Council find that facility operations would not result in a
24 significant generation of solid waste and wastewater and will result in minimal adverse impacts
25 to surrounding and adjacent areas.

26 27 **III.P. NEED FOR A FACILITY: ~~OAR~~ 345-023-0005**

28
29 The Division 23 standards apply only to “nongenerating facilities” as defined in ORS
30 469.503(2)(e)(K), except nongenerating facilities that are related or supporting facilities.

31
32
33 **** To issue a site certificate for a facility described in sections (1) through (3), the*
34 *Council must find that the applicant has demonstrated the need for the facility. The*
35 *Council may adopt need standards for other nongenerating facilities. This division*
36 *describes the methods the applicant shall use to demonstrate need. In accordance with*
37 *ORS 469.501(1)(L), the Council has no standard requiring a showing of need or cost-*
38 *effectiveness for generating facilities. The applicant shall demonstrate need:*

39
40 *(1) For electric transmission lines under the least-cost plan rule, OAR 345-023-0020(1), or*
41 *the system reliability rule for transmission lines, OAR 345-023-0030, or by demonstrating*
42 *that the transmission line is proposed to be located within a “National Interest Electric*

²⁵⁰ B2HAPPDoc3-39 ASC 22_Exhibit V_Waste_ASC 2018-09-28, Section 3.3.2.1

1 *Transmission Corridor” designated by the U.S. Department of Energy under Section 216*
2 *of the Federal Power Act; *****

3
4 The Least-Cost Plan Rule, OAR 345-023-0020, states:

5
6 *(1) The Council shall find that the applicant has demonstrated need for the facility if the*
7 *capacity of the proposed facility or a facility substantially similar to the proposed facility,*
8 *as defined by OAR 345-001-0010, is identified for acquisition in the short-term plan of*
9 *action of an energy resource plan or combination of plans adopted, approved or*
10 *acknowledged by a municipal utility, people's utility district, electrical cooperative, other*
11 *governmental body that makes or implements energy policy****

12 ****

13 *(2) The Council shall find that a least-cost plan meets the criteria of an energy resource*
14 *plan described in section (1) if the Public Utility Commission of Oregon has*
15 *acknowledged the least cost plan.*

16
17 The System Reliability Rule for Electric Transmission Lines, OAR 345-023-0030, states:

18
19 *The Council shall find that the applicant has demonstrated need for an electric*
20 *transmission line that is an energy facility under the definition in ORS 469.300 if the*
21 *Council finds that:*

22
23 *(1) The facility is needed to enable the transmission system of which it is to be a part to*
24 *meet firm capacity demands for electricity or firm annual electricity sales that are*
25 *reasonably expected to occur within five years of the facility's proposed in-service date*
26 *based on weather conditions that have at least a 5 percent chance of occurrence in any*
27 *year in the area to be served by the facility;*

28
29 *(2) The facility is consistent with the applicable mandatory and enforceable North*
30 *American Electric Reliability Corporation (NERC) Reliability Standards in effect as of*
31 *September 18, 2015 as they apply either internally or externally to a utility system; and*

32
33 *(3) Construction and operation of the facility is an economically reasonable method of*
34 *meeting the requirements of sections (1) and (2) compared to the alternatives evaluated*
35 *in the application for a site certificate.*

36
37 **III.P.1. Findings of Fact**

38
39 For non-energy generating facilities such as transmission lines, a certificate holder must
40 demonstrate that the facility is needed under the Need Standard for Nongenerating Facilities.
41 In the *Final Order on ASC*, the certificate holder and the Council agreed that the certificate
42 holder demonstrated that the facility was needed under the least-cost plan rule (OAR 345-023-
43 0020) and the system reliability rule for electric transmission lines (OAR 345-023-0030).
44 Certificate holder maintains, and the Department recommends Council concur that the

1 proposed site boundary additions proposed in RFA1 would not alter the findings Council relied
2 upon in the *Final Order on ASC* for the Need Standard, as summarized below.

3
4 *III.P.2.a Least Cost Plan*
5

6 In the *Final Order on ASC*, Council approved the facility, which is an approximately 300-mile,
7 single-circuit transmission line with a capacity of 500-kilovolts (kV).²⁵¹ Section (1) of OAR 345-
8 023-0020 indicates that the least-cost plan rule requires the certificate holder to demonstrate
9 that the capacity of the facility is identified for acquisition in an energy resource plan. Section
10 (2) of the rule states that the Council shall find that a least-cost plan meets the criteria of an
11 energy resource plan described in Section (1) if the Oregon Public Utility Commission (OPUC)
12 has acknowledged the least cost plan. An Integrated Resource Plan (IRP), as defined in the
13 OPUC's rules meets the definition of an energy resource plan or combination or least cost plan
14 in the Council's rules. OPUC regulates utilities in Oregon, including the review and
15 acknowledgement IRPs which help ensure that an adequate and reliable supply of energy at the
16 least cost to the utility and customers in a manner consistent with the long-term public interest;
17 and the Commission's acknowledgement of the IRP means that the Commission finds that the
18 utility's preferred portfolio is reasonable at the time of acknowledgement.²⁵²
19

20 As described in the *Final Order on ASC*, when the OPUC acknowledged the 2017 and 2019 Idaho
21 Power IRP, it acknowledged construction of a 500-kV transmission line.²⁵³ As explained in OPUC
22 Order No. 18-176 (Docket LC 68), the objective of the IRP is to ensure an adequate and reliable
23 supply of energy at the least cost to the utility and customers in a manner consistent with the
24 long-run public interest and that the Commission's (OPUC) acknowledgement of the IRP means
25 that the Commission finds that the utility's preferred portfolio is reasonable at the time of
26 acknowledgement.²⁵⁴
27

28 Under OAR 345-023-0020(2), "The Council *shall* find that a least-cost plan meets the criteria of
29 an energy resource plan described in section (1) if the Public Utility Commission of Oregon has
30 acknowledged the least cost plan," the findings in the *Final Order on ASC* and in the record for
31 the facility supported Council's finding that the Need Standard was met under the least cost
32 plan rule. [Emphasis added] Certificate holder states in RFA1 that the changes proposed in RFA1
33 would not affect the consideration of the facility under IPC's Integrated Resource Plans

²⁵¹ Under ORS 469.300(11)(C), a high voltage transmission line is an energy facility if it is more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state. B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, Section IV.O.1. Need for a Facility: OAR 345-023-0005.

²⁵² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 631.

²⁵³ Final Order on ASC provided findings and approval of the Least Cost Plan Rule based upon the OPUC acknowledgments of Idaho Power's 2017 and 2019 IRP. ODOE - B2HAPPDoc903 RFA-1,RFA-2 IPC Rebuttal Testimony Exhibits A to H Ellsworth (Email 1 of 2) __ 2021-11-12. Page 298 of 374; Exhibit G: OPUC Order No. 21-184, Acknowledgement of B2H, "The B2H transmission project involves permitting, constructing, operating and maintaining a new single-circuit 500-kV transmission line approximately 300 miles long.." Page 11.

²⁵⁴ B2HAPPDoc3-23 ASC14b_Exhibit N_Need_ASC_Part 2, Attachment N-10, pp. 2-3. 2018-09-28

1 reviewed by OPUC.²⁵⁵ The Department agrees and recommends Council affirm and find that the
2 site boundary additions proposed in RFA1 would not impact Council’s previously approved
3 findings because Council found that the Need Standard is met by the least cost plan rule
4 because OPUC acknowledged the 2017 and 2019 IRP, which acknowledged the permitting,
5 construction, and operation of the facility as a new single-circuit 500-kV transmission line
6 approximately 300 miles long.

7
8 *III.P.2.b System Reliability*
9

10 The system reliability rule under OAR 345-023-0030, allows for the certificate holder to
11 demonstrate need for an electric transmission line that is an energy facility defined under ORS
12 469.300 if the Council finds that:

- 13 • The facility is needed to enable the transmission system of which it is to be a part to
14 meet firm capacity demands for electricity or firm annual electricity sales,
- 15 • The facility is consistent with the applicable mandatory and enforceable North
16 American Electric Reliability Corporation (NERC) Reliability Standards, and
- 17 • Construction and operation of the facility is an economically reasonable method of
18 meeting the requirements of sections (1) and (2) of the rule compared to the
19 alternatives evaluated in the application for a site certificate.

20
21 Certificate holder maintains that the proposed RFA1 site boundary additions would not impact
22 the need of the facility to enable its transmission system under the system reliability rule.²⁵⁶ The
23 Department agrees and recommends Council find that the proposed RFA1 site boundary
24 additions would not impact Council’s previous findings of facts and conclusions of law provided
25 in the *Final Order on ASC* for the following reasons:

- 26
27 • The Department evaluated information and data in the certificate holder’s IRP to
28 support the certificate holder’s position that the facility is needed to support the
29 certificate holder’s transmission system of which it is to be a part to meet capacity
30 demands. The technical data evaluated was the same data the OPUC reviews to
31 establish if the proposed energy facility is need to meet energy needs of the utility’s
32 customers, and it is the lowest cost option to meet demands. The Council concluded
33 that the data supported the conclusion that the facility is needed to support the
34 certificate holder’s transmission system.²⁵⁷ The site boundary additions proposed in
35 RFA1 would not alter the certificate holder’s need to add the facility to its
36 transmission system to meet customer demands.
- 37 • Council previously found that, as a utility subject to NERC and Western Electricity
38 Coordinating Council reliability criteria and compliance, the certificate holder must
39 not only reliably serve customer demand, but must also ensure system stability
40 during both normal system operations and contingency/emergency events. The

²⁵⁵ B2HAMD1 RFA1 2023-06-08. Table 7-1. Standards and Laws Relevant to Proposed Amendment.

²⁵⁶ B2HAMD1 RFA1 2023-06-08. Table 7-1. Standards and Laws Relevant to Proposed Amendment.

²⁵⁷ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 635-636.

1 NERC transmission planning (TPL) standards prescribe acceptable system operating
2 limits for a wide range of system conditions, including loss of generator units and
3 transmission facilities. The facility is evaluated annually as part of NERC TPL
4 compliance requirements, and those modeling results demonstrate that, with the
5 facility in service, it can meet NERC TPL criteria for the planning horizon.²⁵⁸ The
6 proposed site boundary additions in RFA1 would not impact these requirements.

- 7 • Council previously evaluated the alternatives discussed in the certificate holder’s IRP
8 which included an expanded demand response capacity and development of new
9 electric generating facilities (including natural gas and solar), a range of transmission
10 line capacities (alternate voltages) for the facility, and various re-build scenarios as
11 alternatives to construction and operation of the facility, the certificate holder
12 evaluated a range of transmission line capacities for the facility.²⁵⁹ The facility would
13 include, in part, 270 miles of single-circuit 500-kV transmission line. Based upon the
14 alternatives assessment, and in consideration of the OPUC’s determination that the
15 facility would be a least cost, least risk resource to meet the needs of the certificate
16 holder’s customers, the Council found that construction and operation of the facility
17 is an economically reasonable method of meeting the requirements of sections (1)
18 and (2) of the system reliability rule compared to the alternatives evaluated in the
19 application for a site certificate. The site boundary additions proposed in RFA1
20 would not alter this alternatives evaluation of the findings of fact and conclusions of
21 law established in the *Final Order on ASC*.

22 23 **III.P.2. Conclusions of Law**

24
25 Based on the foregoing reasoning and analysis the Department recommends Council find that
26 the site boundary additions proposed in RFA1 would not impact Council’s previous findings of
27 fact and conclusions of law that the certificate holder and facility, have met the Need Standard
28 for Nongenerating Facilities, by both the least cost plan rule under OAR 345-023-0020 and the
29 system reliability rule under OAR 345-023-0030.

30 31 **III.Q. SITING STANDARDS FOR TRANSMISSION LINES – OAR 345-024-0090**

32
33 *To issue a site certificate for a facility that includes any transmission line under*
34 *Council jurisdiction, the Council must find that the applicant:*

35
36 *(1) Can design, construct and operate the proposed transmission line so that*
37 *alternating current electric fields do not exceed 9 kV per meter at one meter*
38 *above the ground surface in areas accessible to the public;*
39

²⁵⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 636-638.

²⁵⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 638-640.

1 (2) Can design, construct and operate the proposed transmission line so that
2 induced currents resulting from the transmission line and related or
3 supporting facilities will be as low as reasonably achievable.²⁶⁰
4

5 **III.Q.1. Findings of Fact**
6

7 The proposed RFA1 site boundary additions do not alter or change anything related to the
8 previously approved facility components, other than potential final location. The changes
9 proposed in RFA1 would therefore not impact the Council’s findings of fact and conclusions of
10 law as presented in the *Final Order on the ASC*.²⁶¹ The Department recommends Council
11 continue to find that the facility, with proposed RFA1 site boundary additions, satisfies the
12 requirements of this standard. For reference, the key findings of fact are presented below.
13

14 *III.O.1.a Electro-magnetic fields*
15

16 The 500-kV single-circuit lattice tower configuration would produce the highest electric fields,
17 modeled is 8.9 kV per meter at 1 meter above the ground. This value is below the limit for
18 electric fields from transmission lines (set at OAR 345-024-0090(1)) of not more than 9 kV per
19 meter at 1 meter above the ground surface in areas that are accessible to the public.
20

21 Council previously imposed Siting Standards for Transmission Line Condition 1 (Condition GEN-
22 TL-01) requiring minimum clearance distances for both the 230- and 500-kV transmission lines;
23 and requiring that the facility design ensure that the alternating current electric fields do not
24 exceed the 9 kV per meter at 1 meter limit established in the standard.
25

26 *III.O.1.b Induced-Currents and Grounding*
27

28 Inducible charge within the ROW of a 500-kV lattice transmission line configuration was
29 modeled to be less than the 5-mA, which is the threshold established by the NESC. Council
30 previously imposed Siting Standards for Transmission Lines Condition 2 (Condition OPR-TL-01)
31 requiring that the certificate holder provide landowners maps of any overheard transmission
32 lines crossing their property with information about potential risks from induced current; and
33 that the certificate holder have protocols for adhering to NESC grounding requirements.
34

35 To further address any potential electrical health and safety risks, Council imposed the
36 following conditions:
37

- 38 • Siting Standards for Transmission Lines Condition 4 (Condition PRE-TL-01) requiring that,
39 prior to construction, the certificate holder brief OPUC on the design, construction, and
40 O&M of the facility.

²⁶⁰ OAR 345-024-0090, effective May 15, 2007.

²⁶¹ B2HAPPDoc31 Final Order on ASC. 2022-09-27. Section IV.P.1.

- Siting Standards for Transmission Lines Condition 5 (Condition OPR-TL-02) requiring that the certificate holder provide annual updates to OPUC’s Safety Staff on operations and maintenance; and report bi-annually to OPUC on operations and maintenance activities

III.Q.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing site certificate conditions described above and in the site certificate, the Department recommends the Council find that the certificate holder can design, construct, and operate the portions of the facility added to the site boundary in RFA1 so that alternating current electric fields do not exceed 9-kV per meter at one meter above the ground surface in areas accessible to the public and that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

III.R. **OTHER APPLICABLE REGULATORY REQUIREMENTS UNDER COUNCIL JURISDICTION**

Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-0000), the Council must determine whether a proposed facility or approved facility, with proposed changes, complies with “all other Oregon statutes and administrative rules..., as applicable to the issuance of a site certificate for the proposed facility.” This section addresses the applicable Oregon statutes and administrative rules that are not otherwise addressed in Council standards, including Oregon Noise Control Regulations, Removal Fill Law and Water Rights.

As stated in the Final Order on ASC, and as discussed in Council’s review of the DPO for RFA1, the Council does not assert jurisdiction of the Forest Practices Act (FPA) and referred the certificate holder to submit necessary information directly to the Oregon Department of Forestry (ODF).²⁶² Certificate holder indicates that Forest Practices Reforestation Rules generally require a landowner to replant (or ensuring natural regeneration of) the forest after a timber harvest and maintain the seedlings to the point that they are "free to grow" at a stocking level that meets the Forest Practices Act’s minimum stocking standards. If forestlands will be converted to a use not compatible with maintaining forest tree cover, the landowner must obtain written approval of a Plan for an Alternate Practice from ODF providing an exemption from the Forest Practices Act’s reforestation requirements. Certificate holder states that it is working directly with ODF on its Plan of Alternate Practice, which applies to reforestation alternatives on private forestland requiring permanent clearance for the transmission line route and for roads, and it will address compliance with the applicable provisions of the FPA through direct coordination with ODF and the finalized plan prior to beginning construction in forestlands.²⁶³

²⁶² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 649-650. Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference,

²⁶³ B2HAMD1 DPO Certificate Holder Responses to RFA1 DPO Public Comments 2023-07-19.

1 In the *Final Order on ASC*, Council adopted various conditions related to compliance with FPA
2 requirements based upon certificate holder representations. Compliance with these FPA-
3 related requirements would minimize potential impacts and hazards in forest lands during
4 construction and operation of the facility, with proposed changes in RFA1. Council imposing
5 such conditions is not intended to assume enforcement authority over FPA requirements, but
6 rather indicates Council found that compliance with the FPA requirements would reduce
7 potential impacts evaluated under Council standards.²⁶⁴
8

9 **III.R.1. Noise Control Regulations: OAR 340-035-0035**

10
11 *(1) Standards and Regulations:*

12
13 ***

14
15 *(b) New Noise Sources:*

16
17 *(A) New Sources Located on Previously Used Sites. No person owning or*
18 *controlling a new industrial or commercial noise source located on a*
19 *previously used industrial or commercial site shall cause or permit the*
20 *operation of that noise source if the statistical noise levels generated by that*
21 *new source and measured at an appropriate measurement point, specified in*
22 *subsection (3)(b) of this rule, exceed the levels specified in Table 8, except as*
23 *otherwise provided in these rules. For noise levels generated by a wind energy*
24 *facility including wind turbines of any size and any associated equipment or*
25 *machinery, subparagraph (1)(b)(B)(iii) applies.*

26
27 *(B) New Sources Located on Previously Unused Site:*

28
29 *(i) No person owning or controlling a new industrial or commercial noise*
30 *source located on a previously unused industrial or commercial site shall cause*
31 *or permit the operation of that noise source if the noise levels generated or*
32 *indirectly caused by that noise source increase the ambient statistical noise*
33 *levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels*
34 *specified in Table 8, as measured at an appropriate measurement point, as*
35 *specified in subsection (3)(b) of this rule, except as specified in subparagraph*
36 *(1)(b)(B)(iii).*

37
38 *(ii) The ambient statistical noise level of a new industrial or commercial noise*
39 *source on a previously unused industrial or commercial site shall include all*
40 *noises generated or indirectly caused by or attributable to that source*
41 *including all of its related activities. Sources exempted from the requirements*

²⁶⁴ [B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 649-650.](#)

1 of section (1) of this rule, which are identified in subsections (5)(b)–(f), (j), and
2 (k) of this rule, shall not be excluded from this ambient measurement.

3
4 ***

5
6 (3) Measurement:

7
8 (a) Sound measurements procedures shall conform to those procedures which
9 are adopted by the Commission and set forth in Sound Measurement
10 Procedures Manual (NPCS-1), or to such other procedures as are approved in
11 writing by the Department;

12
13 (b) Unless otherwise specified, the appropriate measurement point shall be
14 that point on the noise sensitive property, described below, which is further
15 from the noise source:

16
17 (A) 25 feet (7.6 meters) toward the noise source from that point on the noise
18 sensitive building nearest the noise source;

19
20 (B) That point on the noise sensitive property line nearest the noise source.

21
22 (4) Monitoring and Reporting:

23
24 (a) Upon written notification from the Department, persons owning or
25 controlling an industrial or commercial noise source shall monitor and record
26 the statistical noise levels and operating times of equipment, facilities,
27 operations, and activities, and shall submit such data to the Department in the
28 form and on the schedule requested by the Department. Procedures for such
29 measurements shall conform to those procedures which are adopted by the
30 Commission and set forth in Sound Measurement Procedures Manual (NPCS-
31 1);

32
33 ***

34
35 (5) Exemptions: Except as otherwise provided in subparagraph (1)(b)(B)(ii) of
36 this rule, the rules in section (1) of this rule shall not apply to:

37 ***

38 (b) Warning devices not operating continuously for more than 5 minutes;

39
40 (c) Sounds created by the tires or motor used to propel any road vehicle
41 complying with the noise standards for road vehicles;

42 ***

43 (g) Sounds that originate on construction sites.
44

1 (h) Sounds created in construction or maintenance of capital equipment;
2 ***

3 (6) Exceptions: Upon written request from the owner or controller of an
4 industrial or commercial noise source, the Department may authorize
5 exceptions to section (1) of this rule, pursuant to rule 340-035-0010, for:
6

7 (a) Unusual and/or infrequent events;
8

9 (b) Industrial or commercial facilities previously established in areas of new
10 development of noise sensitive property;
11

12 (c) Those industrial or commercial noise sources whose statistical noise levels
13 at the appropriate measurement point are exceeded by any noise source
14 external to the industrial or commercial noise source in question;
15

16 (d) Noise sensitive property owned or controlled by the person who controls or
17 owns the noise source;
18

19 (e) Noise sensitive property located on land zoned exclusively for industrial or
20 commercial use.²⁶⁵
21

22 **OAR 340-035-0010: Exceptions**

23
24 (1) Upon written request from the owner or controller of a noise source, the Department
25 may authorize exceptions as specifically listed in these rules.
26

27 (2) In establishing exceptions, the Department shall consider the protection of health,
28 safety, and welfare of Oregon citizens as well as the feasibility and cost of noise
29 abatement; the past, present, and future patterns of land use; the relative timing of land
30 use changes; and other legal constraints. For those exceptions which it authorizes the
31 Department shall specify the times during which the noise rules can be exceeded and the
32 quantity and quality of the noise generated, and when appropriate shall specify the
33 increments of progress of the noise source toward meeting the noise rules.
34

35 **OAR 340-035-0100: Variances**

36
37 (1) Conditions for Granting. The Commission may grant specific variances from the
38 particular requirements of any rule, regulation, or order to such specific persons or class
39 of persons or such specific noise source upon such conditions as it may deem necessary
40 to protect the public health and welfare, if it finds that strict compliance with such rule,
41 regulation, or order is inappropriate because of conditions beyond the control of the

²⁶⁵ OAR 345-035-0035, effective November 2, 2017, as amended by minor corrections filed on November 8, 2017 and April 2, 2018.

1 persons granted such variance or because of special circumstances which would render
2 strict compliance unreasonable, or impractical due to special physical conditions or
3 cause, or because strict compliance would result in substantial curtailment or closing
4 down of a business, plant, or operation, or because no other alternative facility or
5 method of handling is yet available. Such variances may be limited in time.
6

7 (2) Procedure for Requesting. Any person requesting a variance shall make his request in
8 writing to the Department for consideration by the Commission and shall state in a
9 concise manner the facts to show cause why such variance should be granted.

10 ***

11
12 DEQ 23-2018, minor correction filed 04/02/2018, effective 04/02/2018

13 DEQ 24-2017, minor correction filed 11/08/2017, effective 11/08/2017

14 DEQ 14-2017, amend filed 10/30/2017, effective 11/02/2017
15

16 III.P.1.a Findings of Fact 17

18 Council has the authority to interpret and implement other state agency and Commission rules
19 and statutes that are relevant to the siting of an energy facility,²⁶⁶ including noise rules adopted
20 by the Environmental Quality Commission and previously administered by the Department of
21 Environmental Quality (DEQ).^{267, 268}
22

23 Noise control requirements established in OAR 340-035-0035 apply to new industrial and
24 commercial noise sources, which are defined as “noise generated by a combination of
25 equipment, facilities, operations or activities employed in the production, storage, handling,
26 sale, purchase, exchange, or maintenance of a...service.”²⁶⁹ Council previously found that the
27 facility is a new industrial noise source and therefore the noise control requirements
28 established in OAR 340-035-0035 are applicable.
29

30 As designated in the *Final Order on ASC*, the noise impact analysis area covers approximately
31 209,000 acres, inclusive of the area within a 500-foot transmission line corridor spanning 300

²⁶⁶ See ORS 469.310 (stating that the legislative policy behind EFSC was to establish “a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state”) and ORS 469.401(3) (giving EFSC the authority to bind other state agencies as to the approval of a facility).

²⁶⁷ The Environmental Quality Commission and the DEQ suspended their own administration of the noise program because in 1991 the state legislature withdrew all funding for implementing and administering the program. A July 2003 DEQ Management Directive provides information on DEQ’s former Noise Control Program and how DEQ staff should respond to noise inquiries and complaints. The Directive states (among other items) that the Energy Facility Siting Council (EFSC), under the Department of Energy, is authorized to approve the siting of large energy facilities in the State and that EFSC staff review applications to ensure that proposed facilities meet the State noise regulations.

²⁶⁸ “We (the Oregon Supreme Court) conclude that EFSC had the authority to grant (1) an exception to the noise standards under OAR 340-035-0035(6)(a), and (2) a variance under OAR 340-035-0100 and ORS 467.060.” B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, pp 805-807.

1 miles (i.e. the approved site boundary).²⁷⁰ The analysis area also includes areas extending one-
2 half mile from the proposed site boundary, and areas extending out to one mile where the late-
3 night baseline sound level was unusually low (i.e., less than 26 dBA).²⁷¹

4
5 Even though construction noise is exempt from the noise standards pursuant to OAR 340-035-
6 0035(5)(g) and (h),²⁷² below the Department provides an evaluation of construction-related
7 noise because it is utilized to inform the evaluation of construction-related noise impacts under
8 the Council’s Protected Areas and Recreation standard of this order. This is followed with an
9 evaluation of the proposed transmission line route additions’ compliance with the DEQ noise
10 regulations.

11 **Construction Noise**

12
13
14 Under OAR 340-035-0035(5), noise generated during construction of the areas added to the
15 site boundary are exempt from the requirement to meet DEQ’s noise standards.

16
17 Construction noise related to the areas added to the site boundary would occur during general
18 construction activities, blasting and rock breaking, use of implosive devices during conductor
19 stringing, helicopter operations, and vehicle traffic.²⁷³ General construction activities including
20 operation of construction vehicles and equipment (i.e. auger drill rig, backhoe, crane, dump
21 truck, grader, pickup truck, and tractor) that would occur at a construction site would be
22 considered the result of construction of capital equipment. The 1-hr average predicted noise
23 level from the combined operation of five pieces of equipment is 83 dBA at 50 feet, 79 dBA at
24 100 feet, and attenuates to 46 dBA at 6,400 feet. For reference, classroom chatter has an
25 approximate dBA of 70 and a soft whisper is a dBA of approximately 40.²⁷⁴

26
27 The certificate holder anticipates that tower foundations would typically be installed using
28 drilled shafts or piers; however, blasting may be needed if hard rock is encountered. In such
29 circumstances, impulse noise from blasts could reach up to 140 dBA at the blast location or
30 over 90 dBA within 500 feet of the blast location.²⁷⁵ Council previously required that a Blasting
31 Plan (imposed under Soil protection Condition 4) be finalized and updated after site-specific
32 geotechnical surveys are completed that would avoid blasting in potential rockslide/landslide
33 areas to the maximum extent possible. The Blasting Plan would also address landowner
34 consultations. Soil Protection Condition 4 continues to apply to the areas added to the site
35 boundary that may require blasting under certain conditions.

²⁷⁰ OAR 345-001-0010(2) and OAR 345-015-0160

²⁷¹ B2HAMD1 RFA1 2023-06-08. Section 7.2.1.3.

²⁷² Because construction related noise is exempt from the DEQ noise rules, an evaluation of construction noise generated from auxiliary vehicle use on new or improved roads, and multi-use areas, and helicopter use at NSRs is not required.

²⁷³ B2HAPPD0c3-41 ASC 24_ Exhibit X_Noise_ASC 2018-09-28, Section 3.3.1.

²⁷⁴ Table NC-1: Predicted Noise Levels from General Construction Activities and Figure 13: Common Noise Sources and Expected Noise Levels, B2HAPPD0c31 Final Order on ASC and Attachment 2022-09-27.

²⁷⁵ B2HAPPD0c3-41 ASC 24_ Exhibit X_Noise_ASC 2018-09-28, Section 3.3.1.1.

1
2 Heavy-lift and light duty helicopters may be used during construction of the facility in areas
3 where access roads and/or rough terrain would not permit the delivery of equipment, materials
4 or personnel. Helicopters may also be used for structure/tower placement; hardware
5 installation; and wire-stringing operations and would be deployed from the MUAs or light duty
6 fly yards. Audible noise from light duty and heavy-lift helicopters ranges between 62 and 84
7 dBA, respectively, at a 1,000-foot distance and helicopter use would be limited to daylight
8 hours. Council previously imposed Public Services Condition 3 which requires the submission of
9 a Helicopter Use Plan, which has notification and safety measures and consultation with
10 counties, agencies and landowners. If helicopter use would be necessary for any of the areas
11 added to the site boundary proposed in RFA1, Public Services Condition 3 would continue to
12 apply.

13
14 As noted above, construction noise is exempt from the noise standards pursuant to OAR 340-
15 035-0035(5)(g) and (h). Therefore, the ability of construction-related noise to comply with DEQ
16 noise control regulations is not evaluated further.

17
18 ***Operational Noise – Maintenance Activities***

19
20 Operational noise would include noise generated during operations and maintenance (O&M)
21 activities. The proposed site boundary additions will involve the same maintenance activities
22 that they described in the ASC,²⁷⁶ which include vegetation management, transmission line
23 inspections, transmission line repair and maintenance activities, and access road repair. Regular
24 maintenance activities would also include but are not limited to traffic noise from routine
25 inspections, the use of helicopters to perform inspections, the inspections themselves, and
26 repairs or replacement of equipment.²⁷⁷ Noise generated during maintenance activities is
27 exempt based on the OAR 340-035-0035(5)(h) exemption for maintenance of capital
28 equipment, which includes transmission lines as an asset used in the production of electrical
29 transmission services.²⁷⁸ Therefore, noise generated from maintenance activities is not
30 evaluated further in this analysis of the proposed site boundary additions' compliance with the
31 DEQ noise control regulations.

32
33 ***Operational Noise – Transmission Line Corona Noise***

34
35 Operational noise includes corona noise generated from the transmission line under certain
36 operational and climatic conditions. Corona noise is a low hum and/or a hissing or crackling
37 sound that occurs as a function of transmission line voltage, altitude, conductor diameter,
38 condition of the conductor and suspension hardware, as well as foul weather conditions that
39 result in rain, snow or condensation concentrating in the electric fields on the line. The highest
40 levels of corona noise may occur under foul weather conditions when the conductors are wet.

²⁷⁶ B2HAMD1 RFA1 2023-06-08. Section 7.2.1.2.

²⁷⁷ B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, , Section 3.3.2.1 "Regular Maintenance Activities."

²⁷⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 658.

1 Specifically, Council previously found that foul weather assumed for modeling purposes is
2 defined as a rain rate ranging from 0.8 to five (5) millimeters (mm)/hour because it is a more
3 conservative definition of the weather conditions likely to result in maximum corona noise than
4 the standards used by the US Department of Energy’s (DOE) Corona and Field Effects (CAFE)
5 program (one mm/hour), and is consistent with Electric Power Research Institute (EPRI)
6 guidance.²⁷⁹ This definition also excludes rain events where precipitation is heavy enough that
7 the noise from the weather (rain/wind) would increase ambient sound levels to the extent that
8 the corona noise from the transmission line would be masked and not audible.²⁸⁰

9
10 Under OAR 345-035-0035(1)(b)(B)(i), a new industrial or commercial noise source located on a
11 previously unused industrial or commercial site may not increase ambient statistical noise
12 levels L10 or L50 by more than 10 dBA, or exceed the levels provided in Table 23 provided
13 below. The Department assessed the transmission line corridors added to the site boundary in
14 RFA1 and recommends that they also be considered previously unused industrial or commercial
15 sites for the same reasons provided in the *Final Order on ASC*; because of the undeveloped rural
16 nature, predominant EFU land use, and habitat qualities.

17
18 Operational noise generated by a new industrial or commercial noise source to be located on a
19 previously unused site must comply with two standards: the “maximum allowable noise
20 standard” and the “ambient antidegradation standard.” Under the ambient antidegradation
21 standard, facility-generated noise must not increase the ambient hourly L10 or L50 noise levels
22 at an appropriate measurement point by more than 10 dBA. The *Final Order on ASC* evaluated
23 141 potential locations meeting the definition of a noise sensitive property under OAR 340-035-
24 0015(38), noise sensitive properties are referred as Noise Sensitive Receptors or NSRs.²⁸¹ RFA1
25 assesses two previously evaluated NSRs, 3 and 5010.

26
27 For the approved transmission line Council found that the noise *source* is the 500 kV
28 transmission line and a “previously unused industrial or commercial site” is property which has
29 not been used by any industrial or commercial noise source during the 20 years immediately
30 preceding commencement of construction of a new industrial or commercial source on that
31 property.²⁸² Based on the applicability of the DEQ noise rules to the noise *source* at a *site*, as
32 defined in the *Final Order on ASC*, the evaluation of compliance with the rules is based on
33 operational noise from the facility, in its entirety, as the noise source and, rather than limited to
34 the property for which the facility would be located.²⁸³

35
36 *Noise Analysis Methodology Summary (OAR 340-035-0035(3))*

²⁷⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 676.

²⁸⁰ *Id.*

²⁸¹ OAR 340-035-0015(38) defines Noise Sensitive Property as “real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.”

²⁸² OAR 340-035-0015(47).

²⁸³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp 653-654, 659.

1
2 Per OAR 340-035-0035(3), noise levels must be evaluated at specific measurement points (*i.e.*,
3 25 feet from the noise source at the point on a noise sensitive property²⁸⁴ nearest the noise
4 source, or point on NSR nearest to the noise source) using the DEQ/EQC approved Sound
5 Measurement Procedures Manual, NPC5-1 (Sound Manual), unless other measurement points
6 are specified or other measurement procedures are approved in writing by the Department.
7 The Sound Manual was developed in 1974 and last modified in 1983 and includes methodology
8 based on hand tallies, which have largely become outdated. Neither the rule nor the Sound
9 Manual address or provide methods for establishing ambient noise levels specific to a linear
10 facility. Therefore, in preparation of the ASC the certificate holder's noise consultant developed
11 its own methodology to specify other ambient measurement points and other measurement
12 procedures, described in detail in the ASC and the *Final Order on ASC*, which was reviewed and
13 approved by Council.

14
15 For the proposed site boundary transmission line route additions that are the subject of RFA1,
16 the certificate holder used these same methods, comparing baseline ambient sound levels to
17 the modeled predicted future sound levels at potentially affected NSRs.²⁸⁵ The Department
18 recommends Council continue to find that the methodology used for the ASC and RFA1 is a
19 reasonable and appropriate approach to evaluating the facility's compliance with the Noise
20 Control rules. Below is a summary of the multi-step methodology used for the noise assessment
21 of transmission line noise:

22
23 **Step 1:**²⁸⁶ NSRs, including properties normally used for sleeping, schools, churches, hospitals
24 public libraries, and campsites were identified within the one-half mile analysis area based
25 on aerial imagery, GIS analysis, property records databases, and visual verification. On a
26 case-by-case basis, in areas where the late-night baseline sound level was unusually low
27 (e.g., less than 26 dBA), noise sensitive properties within one mile are identified and
28 included in the analysis.

29 **Step 2:** Sound source characteristics for noise modeling of the transmission line during foul
30 weather conditions are determined. The highest audible noise levels occur in conditions of
31 foul weather, therefore, the noise assessment compares the maximum corona sound level
32 expected during meteorological conditions conducive to corona generation background and
33 sound levels are presented as a function of meteorological conditions.²⁸⁷

²⁸⁴ OAR 340-035-0015(38) defines Noise Sensitive Property as "real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner." IPC refers to Noise Sensitive Properties as Noise Sensitive Receptors or NSRs.

²⁸⁵ RFA #1, Section 7.2.1.3.

²⁸⁶ Where it was unclear if a structure was noise sensitive (e.g., residence, school, campground) vs. non-noise sensitive (e.g., barn, garage), the applicant attempted to visually verify from public right-of-way (ROW) the use of each structure. B2HAPPDoc3-41 ASC 24_ Exhibit X_Noise_ASC 2018-09-28, Section 3.2.1.

²⁸⁷ Principal contributors to the existing acoustic environment included motor vehicle traffic, railroad traffic, streams and rivers, mobile farming equipment and activities, farming irrigation equipment, ATVs, periodic aircraft

1 **Step 3:** Initial screening-level modeling results of the transmission line are calculated based
2 on the foul weather conditions, and an assessment is completed to determine the likely
3 maximum received sound at NSRs within the monitoring analysis area. As a first-level
4 screening review for NSRs, an ambient hourly L50 noise level of 20 dBA is assumed.²⁸⁸
5 Because ambient L50 noise levels at any NSR cannot increase by more than 10 dBA in one
6 hour, the associated “threshold” to establish if there would be an exceedance to the
7 ambient antidegradation standard is 30 dBA. If potential for increasing baseline ambient
8 sound levels by 10 dBA or less could be reasonably assumed, compliance with the ambient
9 antidegradation standard is inferred.

10 **Step 4:** For NSRs that show a potential exceedance based on the assumed 20 dBA ambient
11 hourly L50 noise level (30 dBA threshold), representative baseline sound measurements
12 were conducted at or near 21 monitoring positions (MPs) with acoustic environments
13 representative of the acoustic environments of NSRs identified within the analysis area.
14 Where there were multiple monitoring positions in proximity to NSRs, the MPs with the
15 lower ambient sound level, and were generally located further from existing ambient sound
16 sources than the NSRs are used to provide more conservative representative ambient sound
17 levels.²⁸⁹

18 **Step 5:** From the baseline measurements established in Step 4, the representative existing
19 L50 sound levels are calculated and new compliance thresholds are defined to assess
20 conformance with the ambient antidegradation standard.²⁹⁰

21 **Step 6:** The L50 sound level for each NSR is assigned based on measurements performed in
22 Step 5 for monitoring positions in a similar acoustic environment. An assessment of the
23 ambient antidegradation standard is conducted for each NSR in the analysis area. The
24 assigned ambient baseline sound level is compared to the predicted audible corona noise
25 during foul weather to assess compliance with the ambient degradation standard.

26
27 Because the certificate holder applied the same methodologies to assess the potential noise at
28 the NSRs identified in RFA1, the Department recommends Council find that the multi-step
29 methodology remains a reasonable and appropriate approach to evaluating the facility’s
30 compliance with the Noise Control rules. Specific to using representative Monitoring Positions
31 (MP), the methodology is reasonable because where there were multiple monitoring positions
32 in proximity to NSRs, the certificate holder selected the MPs with the lower ambient sound

flyovers, residential yard sounds (i.e., people and pets), ranch animals, and natural sounds such as birds, insects, and wind interaction with vegetation and/or terrain.

²⁸⁸ During the review of the ASC, the Council approved the use 20 dBA as an assumed ambient sound level for the applicant to filter NSRs in its initial screening level analysis, because 20 dBA is near silence thus a highly conservative assumption.

²⁸⁹ To establish the representativeness of the MP to represent baseline noise for NSRs, similar acoustic environments were established which included an evaluation of proximate noise sources, topography and land cover.

²⁹⁰ The representative existing L50 sound levels are calculated by taking the average of the measured L50 sound levels for the late nighttime period (12:00 a.m. to 5:00 a.m.). This late nighttime period demonstrates the quietest time period and is conservatively assumed to be present at all times of the day. Atypical sources of extraneous sound, such as sound produced by field crews setting up or calibrating the equipment and periods when the wind speed exceeded 10 miles per hour (mph), are removed from the dataset.

1 level and that were generally located further from existing ambient sound sources than the
 2 NSRs to provide more conservative representative ambient sound levels, and in the case of
 3 NSRs identified in RFA1, the MPs were the same MPs used for the analysis in the *Final Order on*
 4 *ASC*.²⁹¹ Therefore, the Department recommends Council find that the use of baseline sound
 5 data from previously approved MPs for the NSRs identified as potentially impacted by the route
 6 additions proposed in RFA1 is also reasonable because both NSRs identified, discussed further
 7 below, were also identified in the *Final Order on ASC* and the same MPs as the ASC we used for
 8 modeling the noise assessment for RFA1.

9

10 *Results of Noise Analysis*

11

12 The evaluation in RFA1 was done for two NSRs, 3 and 5010, which fell within the analysis area
 13 of the one-half mile analysis area and out to a mile in an area with a low (26 dBA ambient noise
 14 level).

15

16 A tabulated summary of the noise modeling analysis done for NSRs identified in RFA1 is
 17 provided in RFA1, Attachment 7-17 which identifies the NSR number, distance to the proposed
 18 transmission line (edge of the site boundary), baseline late night sound pressure levels,
 19 predicted sound levels during foul weather, and the estimated increase in ambient noise during
 20 foul weather conditions at the late-night baseline. RFA1 Figures 7-21 and 7-22 provide aerial
 21 maps showing all of the NSRs identified and evaluated if within the analysis area and indicates if
 22 there is an expected exceedance of the ambient antidegradation standard.

23

24 Table 23, *Summary of Acoustic Modeling Results—Comparison of Predicted Sound Levels to Late*
 25 *Night Baseline L50 (NSR Exceedances) and Maximum Noise Levels for the Proposed Site*
 26 *Boundary Route Additions*, below specifies the NSR’s where the ambient L50 noise level is
 27 expected to increase by 10 dBA or more in one hour, which would represent an exceedance of
 28 the ambient antidegradation standard.

Table 23: Summary of Acoustic Modeling Results—Comparison of Predicted Sound Levels to Late Night Baseline L50 (NSR Exceedances) and Maximum Noise Levels for the Proposed Site Boundary Route Additions

NSR Number	Distance from NSR to Transmission Line (feet)	Nearest Milepost	Related Alternative	Associated Monitoring Point (MP)	Late Night Baseline Sound Pressure Level (dBA)	Predicted Future Sound Level (Foul Weather) (dBA)	Increase (dBA)
3	1,845	17.9	Little Juniper Canyon Alternative	MP05	27	35	+8

²⁹¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 662.

Table 23: Summary of Acoustic Modeling Results—Comparison of Predicted Sound Levels to Late Night Baseline L50 (NSR Exceedances) and Maximum Noise Levels for the Proposed Site Boundary Route Additions

NSR Number	Distance from NSR to Transmission Line (feet)	Nearest Milepost	Related Alternative	Associated Monitoring Point (MP)	Late Night Baseline Sound Pressure Level (dBA)	Predicted Future Sound Level (Foul Weather) (dBA)	Increase (dBA)
5010	2,698	174.2	True Blue Gulch Alternative	MP35	24	37	+13

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Maximum Allowable Noise Standard

Under the maximum allowable noise standard at OAR 340-035-0035(1)(b)(B)(i), a new industrial or commercial noise source to be located on a previously unused site may not exceed the noise levels specified in Table 8 of the noise rules (Table 24 below). Per that table, the maximum allowable L50 sound level standard is 55 A-weighted decibels (dBA) during the daytime (7:00 am – 10:00 pm) and 55 dBA during the nighttime (10:00 pm – 7:00 am). As designated in Table 22 above, the maximum modeled sound level would be 37 dBA, therefore, the Department recommends Council find the certificate holder has provided sufficient evidence to support a finding that corona noise resulting from operation of the transmission line would not exceed the maximum allowable noise standard in OAR 340-035- 0035(1)(b)(B)(i) and Table 8.

Table 24: Statistical Noise Limits for Industrial and Commercial Noise Sources

Statistical Descriptor	Maximum Permissible Hourly Statistical Noise Levels (dBA)	
	Daytime (7:00 AM – 10:00 PM)	Nighttime (10:00 PM to 7:00 AM)
L50	55	50
L10	60	55
L1	75	60

Note: The hourly L50, L10, and L1 noise levels are defined as the noise levels equaled or exceeded 50 percent, 10 percent, and 1 percent of the hour, respectively.
Source: OAR 345-035-0035, Table 8.

14
15
16
17
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21

Ambient Antidegradation Standard

Under the ambient antidegradation standard, facility-generated noise must not increase the ambient hourly noise levels at an appropriate measurement point by more than 10 dBA. As noted above, NSRs within one-half mile of the proposed site boundary additions were identified for the Little Juniper Canyon Alternative in Morrow County and NSRs out to one mile for the True Blue Gulch Alternative in Baker County because the late-night baseline sound level

1 there is unusually low (*i.e.*, less than 26 dBA).²⁹² The certificate holder did not identify any NSRs
2 related to the Durbin Quarry Alternative in Baker County, which was confirmed by the
3 Department in a review of mapsets and online aerial imagery.²⁹³

4
5 NSR 3 may be potentially affected by the proposed site boundary route additions and is located
6 1,845 feet from the proposed Little Juniper Canyon Alternative route, which is approximately 8
7 feet further away from the transmission line than was reviewed for the ASC. NSR 5010 is 2,698
8 feet from the proposed True Blue Gulch Alternative route which is 1,528 feet further away from
9 the transmission line than the route approved in the ASC. The results of the analysis indicate
10 that during foul weather in low wind, late night/early morning conditions, there may be a
11 potential increase of approximately 8 dBA above ambient conditions at NSR 3, and 13 dBA
12 above the ambient conditions at NSR 5010, near the True Blue Gulch Alternative.²⁹⁴

13
14 Because the projected increase at NSR 3 would be less than 10 dBA, that increase would fall
15 within what is allowed under the ambient antidegradation standard in OAR 340-035-
16 0035(1)(B)(i), further, the analysis in the *Final Order on ASC* indicated that the predicted
17 increase in ambient noise during foul weather would also be 8 dBA, and thus there is no change
18 from what Council previously found.

19
20 As highlighted above and in RFA1, the location of the True Blue Gulch Alternative route is 1,528
21 feet further away from NSR 5010 than the previously approved route, which would reduce the
22 increase in the ambient baseline sound levels under foul weather conditions from 17 dBA to a
23 13 dBA increase in the ambient baseline sound levels. The certificate holder indicates that it
24 worked with the property owner of NSR 5010 to locate the proposed route alternative along
25 the edge of their property, in part, to minimize any potential noise impacts; and the NSR
26 property owner and certificate holder have mutually agreed that the alternate route location
27 on the property is acceptable. While the noise levels during foul weather are estimated to be 4
28 dBA less than originally estimated and approved in the *Final Order on ASC*, the 13 dBA is still
29 projected to be more than 10 dBA above ambient conditions.

30
31 *Approved Exception and Variance to the Ambient Antidegradation Standard*

32
33 OAR 340-035-0035(6)(a) allows the Council to consider exceptions to the DEQ Noise Rules and
34 OAR 340-035-0100 allows specific variances from particular requirements of any DEQ Noise
35 Rules, regulation, or order under certain circumstances as described in the DEQ Noise Rules.

36
37 In the *Final Order on ASC*, Council evaluated and granted the request for exception to the
38 ambient antidegradation standard for all transmission line routes because Council determined
39 that the foul weather conditions that may cause corona noise would be unusual or infrequent.
40 In its review of the exception request for the entire transmission line including alternative

²⁹² B2HAMD1 RFA1 2023-06-08. Section 7.2.1.3.

²⁹³ *Id.*

²⁹⁴ B2HAMD1 RFA1 2023-06-08. Table 7.2-1

1 routes, Council evaluated the protection of health, safety, and welfare of Oregon citizens, the
2 feasibility and cost of noise abatement, the past, present, and future patterns of land use,
3 relative timing of land use changes; and other legal constraints.²⁹⁵
4

5 Council approved an exception for the entirety of the transmission line alignment based on the
6 approved methodologies applied for the noise evaluation and its interpretation that the
7 ambient antidegradation standard under -0035(1)(b)(B)(i) applies to the transmission line as the
8 noise source, where identified NSRs represent the appropriate measurement points for which
9 to determine overall compliance of the line.²⁹⁶ Council also based its approval of the exception
10 to the DEQ Noise Rules based upon the definition of foul weather and that the occurrences of
11 foul weather that would be conducive to the worst-case corona noise would be unusual or
12 infrequent.²⁹⁷ Council found that exceedances along the transmission line would be an
13 infrequent event because exceedances are expected to occur less than two percent of the total
14 hours in a given year (because they are projected to occur during foul weather, and foul
15 weather events are infrequent in the project area, and other circumstances need to occur
16 simultaneously to result in an exceedance, i.e., low ambient noise environment and
17 transmission line operating at full capacity).²⁹⁸
18

19 Because the certificate holder followed and applied the same methodologies that Council
20 previously approved for RFA1, and the basis, assumptions, and interpretations for the approval
21 of the exception have not changed, the exception for the transmission line extends to the
22 alternative routes proposed in RFA1. Further, NSR 5010 was already included in Council's
23 previous approval which included a description of the factors that led the transmission line
24 route in proximity to the NSR, of note, is that the transmission line alternative route proposed
25 in RFA1 would move further away from the NSR thus reducing potential noise impacts.²⁹⁹
26

27 NSR 5010 was identified in Noise Control Condition 1, which includes the procedures that the
28 certificate holder will follow to implement its Noise Exceedance Mitigation Plans with NSRs with
29 a modeled exceedance. This Condition continues to apply to the certificate holder, would also
30 apply to the site boundary route additions proposed in RFA1 and will include agreed upon

²⁹⁵ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 682-695.

²⁹⁶ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 680.

²⁹⁷ Foul weather rain rate of 0.8 to 55 mm/hr used in the acoustic modeling, based on the meteorological data, is assumed to be conservative for a predominately arid region. B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 681.

²⁹⁸ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 682.

²⁹⁹ Description in Final Order of ASC for NSR 5010: NSR-5010 (Attachment X-5, Map 34): The approved route runs northwest to southeast near NSR- 5010, through the hills west of Durkee. This portion of the approved route was developed in response to comments received on the BLM's Draft EIS and in coordination with Baker County. The route is intended to reduce impacts on agricultural land uses, high-value soils for agricultural uses, and privately-owned lands in and around Durkee. As shown in ASC Exhibit X, Figure X-8, moving the proposed transmission line to the east may increase the visibility of the proposed transmission line from the Durkee; moving the approved route to the west may increase impacts to Bighorn Sheep Occupied Range, which is Category 2 habitat designated by the Oregon Department of Fish and Wildlife (ODFW). B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 692.

1 measures that would be implemented at the NSR location to minimize or mitigate the ambient
2 antidegradation standard noise exceedance.

3
4 Noise Control Conditions 2-4 also continue to be applicable the certificate holder and would
5 apply to the route alternatives added to the site boundary proposed in RFA1, as summarized
6 below:

- 7 • Noise Control Condition 2 (Condition GEN-NC-02) establishes a system for the
8 certificate holder to receive and respond to complaints associated with potential
9 operational corona noise from landowners not identified in Attachment X-5 of this
10 order as well as a dispute mechanism for NSR property owners identified with an
11 exceedance in Attachments X-4 and X-5. The complaint response plan includes a
12 process for complaint filing, receipt, review and response for NSR exceedances
13 evaluated in the ASC and RFA1, and NSRs that are not identified in the ASC or RFA1.
- 14 • Noise Control Condition 3 (Condition CON-NC-01) requires the certificate holder to
15 construct the proposed transmission line using materials to reduce corona noise
16 such as the use of a triple bundled conductor configuration for 500 kV transmission
17 lines, maintain tension on all insulator assemblies to ensure positive contact
18 between insulators, maintain tension on all insulator assemblies to ensure positive
19 contact between insulators, and to protect conductor surface to minimize scratching
20 or nicking.
- 21 • OAR 340-035-0010(2) stipulates that an exception shall have specified times and
22 quantities associated with it, therefore, Noise Control Condition 4 (Condition OPR-
23 NC-01) establishes that the ambient antidegradation standard may be exceeded at
24 any time during foul weather events (defined as a rain rate of 0.8 to 5 millimeters
25 per hour, as authorized through the OAR 340-035-0035(6)(a) exception. In
26 accordance with OAR 340-035-0010(2), the Council specified via Condition 4, that
27 the exceedance, as measured at any NSR location within the analysis area, shall not
28 be more than 10 dBA above the ambient antidegradation standard (or ambient plus
29 20 dBA) and consist of corona noise.

30
31 In the *Final Order on ASC Council's* authorization of a variance under OAR 340-035-0100 from
32 compliance with the ambient antidegradation standard was also for the entirety of the
33 approved transmission line route, including alternative routes. Council interprets -
34 0035(1)(b)(B)(i) for linear facilities, such as transmission lines, as establishing a 10 dBA ambient
35 statistical noise level at identified NSRs but that NSRs would only establish the measurement
36 point for use as a proxy in determining compliance of the entire line, as the noise source.³⁰⁰
37 Council reviewed and approved the request for variance of the ambient antidegradation
38 standard for the entirety of the transmission line because of conditions beyond the control of

³⁰⁰ Under OAR 340-035-0035(1)(b)(B)(i) as applying to the transmission line as the noise source, where identified NSRs represent the appropriate measurement points for which to determine overall compliance of the transmission line, is a much more practical approach than evaluating the request for an exception at each of the more than 41 identified NSR locations where exceedances could potentially occur. B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 696; Final Order Attachment 6: Contested Case Order (CCO) as Amended and Adopted by Council, page 207-210.

1 the noise source owner, and special circumstances and physical conditions associated with the
2 location of the noise source. As discussed in the *Final Order on ASC*, the approved routes in the
3 ASC were derived from a lengthy siting process, much of which was directed by the BLM, in
4 consultation with agencies, landowners, and affected counties. The routes in the ASC that
5 Council approved were also constrained by factors related to the protection of resources under
6 the EFSC standards. These constraints included the following:

- 7
- 8 • Federal land management agency requirements, including the federal land management
9 plans governing many of the federal lands in the analysis area;
- 10 • Input on route locations from local governments, counties, and landowners;³⁰¹
- 11 • The transmission line route on lands managed by the Bureau of Land Management as
12 issued in the BLM’s Record of Decision (ROD);
- 13 • Western Electricity Coordinating Council Common Corridor Criteria and prudent utility
14 practice, including minimum separation distances from existing transmission lines to
15 ensure reliability of facilities;
- 16 • EFSC’s Fish and Wildlife Habitat Standard, adopts the Oregon Department of Fish and
17 Wildlife’s habitat mitigation policy; which does not permit siting of an energy facility on
18 lands designated Category 1 habitat and recommends avoidance and minimizing
19 impacts to Greater Sage Grouse habitat; and
- 20 • EFSC’s Protected Area Standard, which does not permit siting of an energy facility in
21 certain protected areas, such as parks, scenic waterways, and wildlife refuges, and
22 certain federally designated areas, such as areas of critical environmental concern,
23 wilderness areas, wild and scenic rivers, BLM Class I and U.S. Department of Agriculture,
24 Forest Service Retention visual management areas, national monuments, and National
25 Wildlife Refuges (NWRs).³⁰²
- 26

27 In the *Final Order on ASC*, Council also found a variance from the DEQ Noise Rules was justified
28 because strict compliance may result in substantial curtailment of operation of the facility (i.e.
29 the facility could not be constructed and operated) and there are a lack of opportunities for an
30 alternative facility that could help meet the certificate holder’s obligations to provide service to
31 its rate payers as a utility.³⁰³

32

33 Because the certificate holder followed and applied the same methodologies that Council
34 previously approved, and the basis, assumptions, and interpretations for the approval of the
35 variance have not changed, the previously approved variance for the transmission line extends
36 to the alternative routes proposed in RFA1, including findings associated with NSR 5010. Thus,
37 Noise Control Condition 5 (Condition OPR-NC-02), which relates to the granted variance
38 continues to apply to the certificate holder and would apply to routes proposed in RFA1.

39

³⁰¹ OAR 340-035-0100 (special circumstances and physical conditions).

³⁰² B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, Section 3.4.5.1.

³⁰³ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp 696-698.

1 In the Department’s drafting of the draft proposed order on RFA1 and review of site certificate
2 conditions, the Department identified a discrepancy in Noise Control Condition 5 in the *Final*
3 *Order on ASC* and site certificate and in the Contested Case Order as Amended and Adopted by
4 Council (CCO – Attachment 6 to the final order). Page 222 of 349 of the CCO indicates revisions
5 to Noise Control Condition 5 that derived from the Department’s closing arguments and the
6 certificate holder’s response to closing arguments on the noise issues in the contested case.³⁰⁴
7 The hearing officer recommended, and the Council adopted the following changes to Noise
8 Control Condition 5 through its adoption of the CCO, however, the changes were not
9 highlighted in the CCO and not carried forward into the version of Noise Control Condition 5 in
10 the final order and site certificate.³⁰⁵ The changes are clarifying and stipulate that a variance to
11 compliance with the ambient antidegradation standard is granted for the transmission line at
12 any time of day or night during foul weather events (defined as a rain rate of 0.8 to 5
13 millimeters per hour).

14

15 The Department recommends Council amend Noise Control Condition 5 as presented below:

16

17 **Recommended Amended Noise Control Condition 5:** During operation:

18

19 a. A variance to compliance with the ambient antidegradation standard at OAR 340-
20 035-0035(1)(b)(B) (~~which prohibits an increase of more than 10 dBA above ambient~~
21 ~~sound pressure levels i.e. an increase of 10 dBA above ambient sound pressure~~
22 ~~levels~~) is granted pursuant to OAR 340-035-0100(1) for the transmission line at any
23 time of day or night during foul weather events (defined as a rain rate of 0.8 to 5
24 millimeters per hour).

25

26 b. ~~The quantity and quality of noise generated in exceedance of the ambient~~
27 ~~antidegradation standard shall not be more than 10 dBA (i.e., ambient plus 20~~
28 ~~dBA), as measured at any NSR location. The ambient antidegradation standard at OAR~~
29 ~~340-035-0035(1)(b)(B) may be exceeded by the transmission line at any time of day or~~
30 ~~night. [OAR 340-035-0100]~~

31

[OPR-NC-02; Final Order on ASC; AMD1]

32

33 *III.P.1.b Conclusions of Law*

34

35 Based on the foregoing analysis, the Department recommends Council find that, subject to
36 compliance with the existing and recommended amended conditions, and subject to the
37 previously approved OAR 340-035-0035(6)(a) exception (unusual or infrequent events) and
38 variance to compliance with the ambient antidegradation standard (OAR 340-035-
39 0035(1)(b)(B)(i)), the areas added to the site boundary would otherwise comply with the Noise
Control Regulations in OAR 340-035-0035(1)(b)(B).

³⁰⁴ B2HAPPDoc1300 ODOE's Closing Brief_2022-02-28, page 102; B2HAPPDoc1168 NC-1, NC-2, NC-3, NC-4, NC-6
IPC Response Brief and Motion to Strike _Till_2022-03-30, pp 28-29.

³⁰⁵ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27; Attachment 6 Contested Case Order, As
Amended by Council 2022-09-27, page 222.

1 **III.R.2. Removal-Fill OAR 141-085-0500 through 141-085-0785**

2
3 The Oregon Removal-Fill Law (ORS 196.795 through 196.990) and Department of State Lands
4 (DSL) regulations (OAR 141-085-0500 through 141-085-0785) require a removal-fill permit if 50
5 cubic yards or more of material is removed, filled, or altered within any “waters of the state,”
6 (WOS).³⁰⁶ A removal-fill permit is required for the facility because 50 cubic yards or more of
7 material would be removed, filled or altered within waters of the state. The removal-fill permit
8 is a state permit within the Council’s jurisdiction as discussed in the introduction to Section III.A.
9 Pursuant to ORS 469.503(3) and ORS 469.401(3), the Council must determine whether DSL
10 should issue the removal-fill permit and, if so, the Council must determine the conditions of
11 that permit.³⁰⁷ During Council’s prior review of the ASC for this facility, Council approved
12 issuance of a removal-fill permit.

13
14 The analysis area for RFA1 and other waters of the state is the area within the site boundary.

15
16 *III.R.2.a Findings of Fact*

17
18 Wetlands and waters of the state potentially impacted by the proposed RFA1 changes were
19 evaluated through literature review and wetland delineation surveys. Desktop studies included
20 an evaluation of multiple existing data sources including the U.S. Fish and Wildlife Service
21 National Wetlands Inventory (NWI), the USGS National Hydrography Dataset (NHD), and areas
22 of hydric soil mapped by the Natural Resources Conservation Service.³⁰⁸ Prior to conducting the
23 field surveys, wetland specialists plotted data from the Oregon Spatial Data Library (Oregon
24 Wetlands database) and the NHD on high-resolution aerial photography to identify locations of
25 probable wetlands and non-wetland waters within the site boundary additions. These data
26 sources were used to estimate potential impacts to wetlands and WOS where site access was
27 not granted, which is summarized in RFA1 Table 5.3-2. Where site access was granted to
28 evaluate the proposed RFA1 site boundary additions, field staff identified wetland presence
29 using the methodology provided by the 1987 U.S. Army Corps of Engineers (USACE) *Wetlands*
30 *Delineation Manual* as well as the USACE *Arid West Regional Supplement* (used in the majority
31 of the analysis area) and the *Western Mountains, Valleys, and Coast Regional Supplement* (for
32 the higher elevation areas of the analysis area around the Wallowa-Whitman National Forest).
33 The results of the field surveys are provided below in Table 25: *Estimated Temporary and*
34 *Permanent Impacts on Delineated Wetlands and WOS for RFA1.*

35
36 *Results of Wetland Field Surveys and Desktop Evaluation of Wetlands/WOS for RFA1*

37
38 RFA1 Figure 5-1 illustrates the locations of wetlands and WOS associated with the proposed
39 RFA1 site boundary transmission line route additions and Figure 5-2 illustrates the wetlands
40 and WOS associated with the proposed RFA1 access road site boundary additions. As

³⁰⁶ ORS 196.800(15) defines “Waters of this state.” The term includes wetlands and certain other waterbodies.

³⁰⁷ See also OAR 345-021-0010(1)(j)(E).

³⁰⁸ B2HAMD1 RFA1 2023-06-08. Section 5.3.1

1 summarized in Table 25 below, the estimated impact to field surveyed/delineated wetland
 2 features includes 0.06 acres of total permanent impacts and 0.04 acres of total temporary
 3 impacts. The estimated impact to field surveyed/delineated non-wetland WOS includes 0.105
 4 acres of total permanent impacts and 0.386 acres of total temporary impacts. The combined
 5 total permanent and temporary impacts to wetlands and waters of the state is 0.591 acres.

Table 25: Estimated Temporary and Permanent Impacts on Delineated Wetlands and WOS for RFA1

County	Source	Field Delineated Wetland ID	Sum of Area (Acres)	
			Permanent Disturbance	Temporary Disturbance
Wetlands				
Baker	Field Delineated	BA-W-102	0.02	0.03
Baker	Field Delineated	BA-W-1106	0.01	0.01
Malheur	Field Delineated	MA-W-1000	0.03	0.00
Total =			0.06	0.04
Streams				
Baker	Field Delineated	BA-ST-04	-	0.035
Baker	Field Delineated	BA-ST-05	-	0.026
Baker	Field Delineated	BA-ST-07	0.001	0.001
Baker	Field Delineated	BA-ST-1105	-	0.018
Baker	Field Delineated	BA-ST-1108	0.000	0.000
Baker	Field Delineated	BA-ST-1109	0.000	0.006
Baker	Field Delineated	BA-ST-1110	0.000	0.000
Baker	Field Delineated	BA-ST-112	0.001	0.002
Baker	Field Delineated	BA-ST-113	0.001	0.003
Baker	Field Delineated	BA-ST-500	-	0.000
Malheur	Field Delineated	MA-D-1000	0.072	0.182
Malheur	Field Delineated	MA-PR-ST-117	0.027	0.110
Malheur	Field Delineated	MA-PR-ST-126a	0.001	0.001
Malheur	Field Delineated	MA-ST-1103	0.001	0.001
Malheur	Field Delineated	MA-ST-1104	0.001	0.000
Malheur	Field Delineated	MA-ST-800	0.000	0.001
Total =			0.105	0.386

6
 7 To address site access issues associated with siting a transmission line and to allow for
 8 necessary survey information needed for the EFSC process, Council approved a phased
 9 approach to collect and submit the additional survey data to the Department and DSL.³⁰⁹ To
 10 ensure that additional wetland delineation reports are submitted to the Department and to DSL
 11 prior to any construction activities on any unsurveyed parcels within the site boundary, the

³⁰⁹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, Section III.D., Survey Data Based on Final Design and Site Access and IV.Q.2. Removal Fill Law: OAR 141-085-0500 through -0785.

1 Council adopted Removal-Fill Condition 1 (PRE-RF-01), which includes stipulations to ensure
2 that, prior to construction, the certificate holder completes wetland/WOS surveys for any
3 unsurveyed areas where facility-related temporary or permanent impacts would occur; submits
4 the resulting wetland delineation report(s) to the Department and DSL; and obtains and
5 provides to the Department DSL’s concurrence determination demonstrating that the
6 wetlands/WOS and associated impacts have been accurately delineated. This condition applies
7 to any unsurveyed areas associated with the proposed RFA1 site boundary additions. Similarly,
8 Removal Fill Condition 4 (PRE-RF-02) requires that, prior to construction, the certificate holder
9 submit an updated Joint Permit Application (JPA) to the Department, which would also
10 continue to apply.

11
12 The estimated 0.426 acres of temporary impacts to wetlands and WOS associated with the
13 proposed RFA1 site boundary additions would be mitigated via a Site Rehabilitation Plan,
14 reviewed and approved by the Department, in consultation with DSL (Removal-Fill Condition 2
15 [GEN-RF-01]). According to the draft Site Rehabilitation Plan, impacts to wetlands and non-
16 wetland WOS would be mitigated within 24 months of disturbance. The draft Site Rehabilitation
17 Plan (*Final Order on ASC*, Attachment J-2) requires re-establishing pre-existing contours of the
18 site, soil decompaction, re-establishing the pre-existing vegetation community, and rapid site
19 stabilization to prevent erosion.

20
21 Permanent impacts from the proposed RFA1 site boundary additions to wetlands and WOS are
22 estimated at 0.165 acres. Permanent wetland/WOS impacts will be mitigated by the
23 Compensatory Wetland and Non-Wetland Mitigation Plan (CWNWMP), adopted under
24 Removal-Fill Condition 3 (GEN-RF-02). The CWNWMP designates mitigation actions for
25 permanent impacts to wetland functions and values through the creation of functioning
26 wetlands and enhancement of existing wetlands at a mitigation site (referred to as the
27 Hassinger Mitigation Site) adjacent to Catherine Creek in the Grande Ronde Basin in Union
28 County, Oregon.³¹⁰ The CWNWMP uses DSL’s mitigation ratio calculators to designate
29 appropriate mitigation acres at the mitigation site, to which DSL previously indicated that it
30 meets DSL requirements.³¹¹

31
32 The Department recommends Council amend Removal-Fill Condition 2. The existing condition
33 requires that, prior to construction, the CWNWMP be finalized. However, for previously
34 surveyed areas, concurred by DSL, the CWNWMP is final. The components of the CWNWMP
35 that need to be finalized are those that apply to unsurveyed areas. The Department
36 recommends amending the Condition for clarity as follows:

37
38 **Recommended Amended Removal Fill Condition 3:** The certificate holder shall:

³¹⁰ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 706; B2HAPPDoc3-18 ASC 10a_B2H_2018 Exhibit J Waters of the State Part 1 2018-09-28, Section 3.4.6.2.

³¹¹ B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 707; B2HAPPDoc13-3 ASC Reviewing Agency Comment DSL_Cary 2018-11-02.

- 1 a. Prior to construction of a phase or segment of the facility, as applicable, submit an
2 updated ~~final~~ Compensatory Wetland and Non-Wetland Mitigation Plan (CWNWMP
3 ~~-~~), ~~consistent with the draft CWNWMP (Attachment J-1 to the Final Order on the~~
4 ~~ASC)~~, ~~for review and approval by the Department, in consultation with Department~~
5 ~~of State Lands (DSL). The Department shall provide written verification of its review~~
6 ~~and approval of the final CWNWMP.~~ Updates to the CWNWMP include the final
7 amount of wetland mitigation credit required which shall be based on the final
8 design configuration of the phase or segment of the facility, as applicable, and the
9 estimated acres of wetlands and non-wetland waters of the state that would be
10 permanently impacted, unless otherwise agreed to by the Department.
11 b. Following construction and during operation of a phase or segment of the facility,
12 the certificate holder shall implement the actions described in the final CWNWMP.
13 c. The Department will provide updates to Council on the certificate holder's
14 implementation of the final CWNWMP and of any Plan revisions at Council meetings,
15 following submittal of the certificate holder's six-month construction progress
16 report per General Standard of Review Condition 3 or annual report per General
17 Standard of Review Condition 4
18 d. The final CWNWMP version approved when the facility begins operation may be
19 revised or updated from time to time by agreement of the certificate holder and the
20 Oregon Energy Facility Siting Council. Such revisions or updates may be made
21 without amendment of the site certificate. The Council authorizes the Department
22 to agree to revisions or updates to this plan, in consultation with DSL. The
23 Department shall notify the Council of all revisions or updates, and the Council
24 retains the authority to approve, reject, or modify any revisions or updates of the
25 plan agreed to by the Department.

26 [GEN-RF-02; Final Order on ASC; AMD1]

27
28 Council previously adopted Removal-Fill Permit Condition 5, specifying that the conditions set
29 forth in the removal-fill permit are conditions of approval in the site certificate. Additionally,
30 Council imposed Removal-Fill Condition 6 to ensure that the removal-fill permit is updated prior
31 to construction of the facility and any impacts to wetlands or WOS. However, Removal-Fill
32 Condition 5 and 6 contained redundant requirements to comply with the conditions set out in
33 the removal fill permit. To reduce redundancy and to clarify that the removal fill permit
34 conditions apply to pre-construction, construction, and operation of the facility, including the
35 proposed RFA1 site boundary additions, the Department recommends Council remove
36 Removal-Fill Condition 5 and amend Removal-Fill Condition 6 as follows:

37
38 **Recommended Deleted Removal Fill Condition 5:** ~~Prior to construction of a phase or~~
39 ~~segment of the facility and during operation, the certificate holder shall maintain~~
40 ~~compliance with the General and Special Conditions set forth in the removal fill permit~~
41 ~~(Attachment J-3 to the Final Order on the ASC). [DELETED]~~

42 [GEN-RF-03; Final Order on ASC, AMD1]

43
44 **Recommended Amended Removal Fill Condition 6:** The certificate holder shall:

- a. Prior to construction of a phase or segment of the facility:
 - i. ~~Maintain compliance with the General and Special Conditions set forth in the removal-fill permit (Attachment J-3 to the Final Order on the ASC); comply with procedures in all Removal-Fill Conditions, and~~
 - ii. ~~R~~receive an updated removal-fill permit (Attachment J-3 to the Final Order on the ASC) reviewed and approved by the Department in consultation with the Oregon Department of State Lands.
 - iii. ~~Prior to construction of a phase or segment of the facility, s~~Submit a final copy of the updated removal-fill permit issued by the Oregon Department of State Lands.
- b. Following construction and during operation of a phase or segment of the facility, the certificate holder shall implement the actions ~~described in the removal-fill permit and maintain compliance with the General and Special Conditions set forth in the removal-fill permit (Final Order on the ASC Attachment J-3).~~
- c. The Department will provide updates to Council on the certificate holder’s implementation of the removal-fill permit and of any permit revisions at Council meetings, following submittal of the certificate holder’s six-month construction progress report per General Standard of Review Condition 3 or annual report per General Standard of Review Condition 4.
- d. The removal-fill permit version approved when the facility begins operation may be revised or updated from time to time by agreement of the certificate holder and the Oregon Energy Facility Siting Council (“Council”). Such revisions or updates may be made without amendment of the site certificate. The Council authorizes the Department to agree to revisions or updates to this permit. The Department shall notify the Council of all revisions or updates, and the Council retains the authority to approve, reject, or modify any revisions or updates of the permit agreed to by the Department. [GEN-RF-04; Final Order on ASC, AMD1]

III.R.2.b Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing and proposed amended site certificate conditions described above, the Department recommends the Council find that the proposed RFA1 site boundary additions would comply with Oregon removal-fill law; that the removal-fill permit with conditions contained in the Final Order on the ASC, Attachment J-3 apply to the proposed RFA1 site boundary additions; and that DSL shall continue to issue a removal-fill permit for the facility, with proposed RFA1 site boundary additions.

III.R.3. Water Rights

Under ORS Chapters 537 and 540 and OAR Chapter 690, the Oregon Water Resources Department (OWRD) administers water rights for appropriation and use of the water resources of the state. Under OAR 345-022-0000(1)(b), the Council must determine whether the facility, with proposed changes, would comply with the statutes and administrative rules identified in the project order. The project order identifies OAR 690, Divisions 310 and 380 (Water

1 Resources Department permitting requirements) as the administrative rules governing use of
2 water resources and water rights as applicable to the facility.

3
4 *III.R.3.a Findings of Fact*

5
6 In the *Final Order on the ASC*, the Council found that the certificate holder had established that
7 it can obtain adequate water for construction and operation of the facility from municipal
8 water service providers in the vicinity of the facility, and would not need a groundwater permit,
9 surface water permit, or water right transfer.³¹²

10
11 In the proceedings on the ASC, the certificate holder estimated that between approximately
12 36.5 and 54.8 million gallons of water would be needed to construct the facility, depending on
13 weather and other conditions during the 36-month construction period.³¹³ The certificate
14 holder also estimated that approximately 30-gallons of water per day would be needed during
15 operations for the facility’s restroom at the Longhorn Substation.³¹⁴

16
17 The scope and extent of construction activities involved associated with facility components
18 located within the proposed RFA1 site boundary additions would be similar to those evaluated
19 In the *Final Order on the ASC*. As a result, no significant changes to the volume of water needed
20 for construction is expected. In addition, no changes to facilities that would require connection
21 to a water source during operations are proposed as part of RFA1, and the certificate holder
22 has not requested approval to obtain water rights or other water use permits.

23
24 *III.R.3.b Conclusions of Law*

25
26 Because the proposed RFA1 site boundary additions would not significantly increase demand
27 for water during construction or operation of the facility, because the certificate holder
28 previously demonstrated that it could obtain necessary water from municipal water providers
29 under existing rights, and because the certificate holder has not requested authorization to
30 obtain a water right or other water permit, the Department recommends the Council conclude
31 that the proposed RFA1 site boundary additions would not require a groundwater permit,
32 surface water permit, or water right transfer. If such a permit is required by the certificate
33 holder at a later time, a site certificate amendment would be required to review and consider
34 such a permit application.

35
36 **III.R.4. Fish Passage: OAR 635-412-0035**

37
38 Pursuant to ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-
39 0000), the Council must determine whether the facility complies with “all other Oregon statutes
40 and administrative rules..., as applicable to the issuance of a site certificate for the facility.”

³¹² B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27. Page 731 of 10586

³¹³ B2HAPPDoc3-24 ASC 15_Exhibit O_Water_Use_ASC 2018-09-28, Table O-1a

³¹⁴ B2HAPPDoc3-24 ASC 15_Exhibit O_Water_Use_ASC 2018-09-28. Page 8 of 32

1 Under OAR 635-412-0020, new construction affecting fish-bearing streams in Oregon will
2 trigger fish passage rules and regulations and require review by the Oregon Department of Fish
3 and Wildlife (ODFW). This requires upstream and downstream fish passage at all existing or
4 new artificial obstructions in Oregon waters in which migratory native fish are currently or have
5 historically been present, except under certain circumstances.

6
7 *III.R.4.a Findings of Fact*
8

9 The proposed RFA1 site boundary additions will not result in stream crossings where new
10 artificial obstructions, or substantial modifications to existing obstructions, on any waters
11 would occur.

12
13 Council previously imposed Fish Passage Condition 1 (GEN-FP-01) requiring, in part, that the
14 certificate holder confer with ODFW and seek concurrence on the evaluation of crossings and
15 fish presence to ensure that if construction is required for a crossing of any fish-bearing stream,
16 existing or historic, where review and approval has not yet occurred, that the approach review
17 of and approval of fish passage designs is completed prior to construction.

18
19 *III.R.4.b Conclusions of Law*
20

21 Based on the foregoing findings of fact, the Department recommends that Council find that the
22 proposed RFA1 site boundary additions will not trigger Fish Passage Requirements of OAR 635,
23 Division 412.
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1 **IV. PROPOSED CONCLUSIONS AND ORDER**

2
3 Based on the recommended findings of fact and conclusions of law included in this order, under
4 OAR 345-027-0375, the Department recommends Council find that the preponderance of
5 evidence on the record, including RFA1 and the record of the *Final Order on ASC* which includes
6 the record of the contested case on Proposed Order on ASC, supports the following
7 conclusions:

- 8
9 1. The proposed RFA1 site boundary additions comply with the applicable substantive
10 criteria under the Council’s Land Use standard, as described in OAR 345-022-0030,
11 from the date RFA1 was submitted.
12
13 2. The proposed RFA1 site boundary additions comply with the requirements of the
14 Energy Facility Siting Statutes ORS 469.300 to 469.520.
15
16 3. The proposed RFA1 site boundary additions comply with all applicable standards
17 adopted by Council pursuant to ORS 469.501, in effect on the date Council issues its
18 Final Order.
19
20 4. The proposed RFA1 site boundary additions comply with all other Oregon statutes
21 and administrative rules identified in effect on the date Council issues its Final
22 Order.
23
24 5. Taking into account the proposed RFA1 site boundary additions, the amount of the
25 bond or letter of credit required under OAR 345-022-0050 is adequate.

26
27 Accordingly, the Department recommends Council find that the facility, with the proposed
28 changes, complies with the General Standard of Review OAR 345-022-0000 and OAR 345-027-
29 0375. The Department therefore recommends that the Council approve Request for
30 Amendment 1 of the Site Certificate for the Boardman to Hemingway Transmission Line, and
31 issue the 1st -Amended Site Certificate included as Attachment 1 to this order.

32
33 Issued August 7, 2023

34
35 OREGON DEPARTMENT OF ENERGY
36

By: 
Todd Cornett, Assistant Director
Oregon Department of Energy, Energy Facility Siting Division

1 **ATTACHMENTS:**

2

3 Attachment 1: Draft First Amended Site Certificate (red-line)

4 Attachment 2: DPO Comments

5 Attachment 3: Certificate Holder Responses to DPO Comments

6 Attachment B-5: Road Classification Guide and Access Control Plan Supplement

7 Attachment G-4: Draft Amended Hazardous Waste Management and Spill Response Plan

8 Attachment G-5: Draft Amended Framework Blasting Plan

9 Attachment P1-4: Amended Vegetation Plan

10 Attachment P1-6: Draft Amended Fish and Wildlife Habitat Mitigation Plan

11 Attachment 7-16: Wildfire Mitigation Plan

12

SITING OF ENERGY FACILITIES IN OREGON

EFSC Requirements and Standards

Notice of Intent (NOI): OAR 345-020-0011 – Contents of a Notice of Intent

Exhibit A	Applicant and Participating Persons	345-020-0011(1)(a)
Exhibit B	Project Description	345-020-0011(1)(b)
Exhibit C	Project Location.....	345-020-0011(1)(c)
Exhibit D	Transmission or Pipeline.....	345-020-0011(1)(d)
Exhibit E	Permits Required	345-020-0011(1)(e)
Exhibit F	Adjacent Property Owners Name & Addresses.....	345-020-0011(1)(f)
Exhibit G	Maps.....	345-020-0011(1)(g)
Exhibit H	Non-Generating Facility Need	345-020-0011(1)(h)
Exhibit I	Choice of Land Use Standards (EFSC or local jurisdiction).....	345-020-0011(1)(i)
Exhibit J	Significant Environmental Impacts	345-020-0011(1)(j)
Exhibit K	Adverse Impacts of Construction & Operation.....	345-020-0011(1)(k)
Exhibit L	Water Use.....	345-020-0011(1)(l)
Exhibit M	Carbon Dioxide	345-020-0011(1)(m)
Exhibit N	Applicable OARs, ORS and Local Land Use Requirements.....	345-020-0011(1)(n)
Exhibit O	Schedule to Submit an Application	345-020-0011(1)(o)
Exhibit P	Consultation with State Commission on Indian Services	345-020-0011(1)(p)

Application for a Site Certificate (ASC): OAR 345-021-0010 – Contents of an Application

Exhibit A	Applicant and Participating Persons	345-021-0010(1)(a)
Exhibit B	Project Description	345-021-0010(1)(b)
Exhibit C	Project Location.....	345-021-0010(1)(c)
Exhibit D	Organizational Expertise.....	345-021-0010(1)(d)
Exhibit E	Permits Required	345-021-0010(1)(e)
Exhibit F	Adjacent Property Owners Name & Addresses.....	345-021-0010(1)(f)
Exhibit G	Materials Analysis	345-021-0010(1)(g)
Exhibit H	Geologic and Soil Stability	345-021-0010(1)(h)
Exhibit I	Soil Conditions.....	345-021-0010(1)(i)
Exhibit J	Wetlands and other Jurisdictional Waters	345-021-0010(1)(j)
Exhibit K	Land Use.....	345-021-0010(1)(k)
Exhibit L	Protected Areas.....	345-021-0010(1)(l)
Exhibit M	Financial Capability	345-021-0010(1)(m)
Exhibit N	Non-Generating Facility Need	345-021-0010(1)(n)
Exhibit O	Water Use.....	345-021-0010(1)(o)
Exhibit P	Fish and Wildlife Habitat	345-021-0010(1)(p)
Exhibit Q	Threatened and Endangered Plant and Animal Species.....	345-021-0010(1)(q)
Exhibit R	Scenic	345-021-0010(1)(r)
Exhibit S	Historic and Cultural Resources.....	345-021-0010(1)(s)
Exhibit T	Recreation	345-021-0010(1)(t)

Continued on back



Exhibit U	Public Services	345-021-0010(1)(u)
Exhibit V	Solid Waste and Wastewater.....	345-021-0010(1)(v)
Exhibit W	Site Restoration	345-021-0010(1)(w)
Exhibit X	Noise	345-021-0010(1)(x)
Exhibit Y	Carbon Dioxide Emissions	345-021-0010(1)(y)
Exhibit Z	Evaporative Cooling Tower	345-021-0010(1)(z)
Exhibit AA	Electric Transmission Line EMFs	345-021-0010(1)(aa)
Exhibit BB	Other Requested Information	345-021-0010(1)(bb)
Exhibit CC	Applicable Statutes, Rules, Ordinances	345-021-0010(1)(cc)
Exhibit DD	Specific Requirements (Induced Currents)	345-021-0010(1)(dd)

345-021-0020 – Specific Application Requirements for Siting of Surface Facilities Related to Underground Gas Storage Reservoirs

**Exhibits do not conform exactly to the Exhibits in the Notice of Intent Stage*

General Standards for Siting Facilities

OAR 345-022-0000 through 0120

345-022-0000	General Standard of Review
345-022-0010	Organizational Expertise
345-022-0020	Structural Standard
345-022-0022	Soil Protection
345-022-0030	Land Use
345-022-0040	Protected Areas
345-022-0050	Retirement and Financial Assurance
345-022-0060	Fish and Wildlife Habitat
345-022-0070	Threatened and Endangered Species
345-022-0080	Scenic Resources
345-022-0090	Historic, Cultural and Archaeological Resources
345-022-0100	Recreation
345-022-0110	Public Services
345-022-0120	Waste Minimization

OAR 345-023-0005 through 0040

Need Standard for Non-Generating Facilities

OAR 345-024-0010 through 0720

345-024-0010 through 345-024-0015	Specific Standards for Siting Wind Facilities
345-024-0030	Specific Standards for Surface Facilities Related to Underground Gas Storage Reservoirs
345-024-0090	Specific Standards for Transmission Lines
345-024-0500 through 345-024-0720	Standards for Energy Facilities that Emit Carbon Dioxide

For more information, go to www.oregon.gov/energy/facilities-safety/facilities/Documents/Fact-Sheets/Process-Flowchart.pdf



PUBLIC NOTICE

Boardman to Hemingway Transmission Line - Proposed Order on Site Certificate Amendment 1 & Opportunity to Request a Contested Case

Summary:

Notice Date: August 7, 2023

Site Certificate Amendment Request: Add area to the site boundary to accommodate: (a) re-location of transmission line route segments on three properties; (b) location refinement of some new and substantially modified roads; (c) amendment of site certificate condition language to support implementation and interpretation.

Location of Proposed Changes: The approved facility is located in five counties in Oregon: Morrow, Umatilla, Union, Baker and Malheur. The changes proposed in the amendment request would be located within all five counties.

Review Process: Type A Amendment Review

Purpose of Notice:

- 1) To inform the public of the Oregon Department of Energy's (Department or ODOE) issuance of the Proposed Order on Request for Site Certificate Amendment 1 for Boardman to Hemingway Transmission Line (Proposed Order), further described on Page 2 below; and
- 2) To notify individuals or organizations that commented on the record of the Draft Proposed Order of their right to request to participate in a Contested Case (described starting on Page 3 below).

Deadline to Request a Contested Case Proceeding:
September 8, 2023 at 5:00 p.m. Pacific

Description of Facility (Approved): The approved but not constructed facility is an approximately 300 mile (275 miles in Oregon), single circuit, 500 kilovolt (kV) electrical transmission line which includes transmission towers, a switching station, and access roads as well as removal of approximately 12 miles of existing 69-kV transmission line, rebuilding of

approximately 1 mile of a 230-kV transmission line, and rebuilding of approximately 1 mile of an existing 138-kV transmission line.

Facility Location: The facility site boundary is located in Morrow, Umatilla, Union, Baker and Malheur counties.

Boardman to Hemingway Transmission Line Request for Site Certificate Amendment 1 - Process Overview:

Request for Site Certificate Amendment: Idaho Power Corporation (certificate holder) filed a complete request for amendment 1 (RFA1) on June 8, 2023.

Draft Proposed Order Issuance: On June 14, 2023 the Department issued a Draft Proposed Order (DPO) on RFA1. The DPO, ODOE's first evaluation of RFA1, included recommended findings of fact, conclusions of law, new and amended site certificate conditions, and recommends that Council approve the proposed changes.

Draft Proposed Order Public Hearing: Pursuant to OAR 345-027-0367, public hearings on the DPO were held on July 17 and 18, 2023 and the public comment period concluded at the close of the public hearing on July 18, 2023. The certificate holder was granted until July 19, 2023 at 10 am to respond to issues raised in comment received during the hearing.

Council Review of the Draft Proposed Order: At its July 19, 2023 meeting, the Energy Facility Siting Council (Council or EFSC) reviewed the DPO, DPO comments, and responses to comments, and provided comments to the Department.

Proposed Order: The Proposed Order is the Department's second evaluation of RFA1 and includes revisions based on an evaluation of issues raised in comments on the record of the DPO. The Proposed Order recommends that EFSC find that a

preponderance of evidence on the record supports the conclusions that the portion of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards applicable to an original site certificate application; the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate; and, the facility, with the proposed change, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change, subject to recommended conditions; and that EFSC approve RFA1, subject to existing and recommended new and amended conditions. All changes from the DPO are shown in the Proposed Order in underline/strikethrough format. Material changes are summarized in Attachment 1 of this notice.

RFA1 and the Proposed Order are available online at: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/B2H.aspx>

In Hardcopy: Hard copies of RFA1, the DPO, and Proposed Order are available for public inspection at the following location at no cost:

Oregon Department of Energy
550 Capitol Street NE
Salem, OR 97301
Phone: 503-586-6551
Email: Kellen.TARDAEWETHER@energy.oregon.gov

Please contact the Department to arrange viewing of these documents. Hard copies will be provided at reasonable cost upon request to the Department.

Contested Case: Unlike an application for a site certificate (ASC), there is no requirement that an automatic contested case occur. For Type A amendment review, under OAR 345-027-0371, there is an opportunity to request a contested case proceeding. **Please go to pages 3-4 for information about contested cases for site certificate amendments, including how to request to request a contested case.**

Final Order: Following a contested case proceeding, or the Proposed Order phase if no requests for a contested case are received and granted by EFSC, EFSC will issue a Final Order either approving or rejecting RFA1. If approved, an Amended Site Certificate will be issued.

The Siting Division Public Guide contains additional information on the EFSC process. To view this information on the Department's website, please use the following link: <http://tinyurl.com/EFSCPublicGuide>

Receipt of this Notice: Please note that you may be receiving this notice for one or more of the following reasons:

1. You commented in person or in writing on the record of the DPO public hearing conducted under OAR 345-027-0367.
2. You own property within or adjacent to (within 500 feet of) the property boundary on which the proposed RFA1 changes would be located. You will automatically receive all future Council notices regarding this facility.
3. You have requested to receive paper notices on the Boardman to Hemingway Transmission Line. If you wish to be removed from this mailing list, please contact Kellen Tardaewether.
4. You have previously signed up via GovDelivery/ClickDimensions to receive email notices related to the facility or all EFSC project-related notices. You will automatically receive all future email notices per your request, unless you unsubscribe via ClickDimensions or by contacting the Department.

Additional Information: Please contact Kellen Tardaewether, the Department representative, if you have questions.

Kellen Tardaewether
Senior Siting Analyst
550 Capitol St. NE Salem, OR 97301
C: 503-586-6551
P (In Oregon): 800-221-8035
Email: Kellen.TARDAEWETHER@energy.oregon.gov

Updates by Email/Mail: Sign-up for email updates on the Boardman to Hemingway Transmission Line or other energy facilities under Council jurisdiction. The Department's email update system is automated and allows interested members of the public to manage subscriptions to information received about Department projects and events. For more information, please visit: <https://tinyurl.com/ODOE-EFSC>.

To receive notices by U.S. Mail, please contact Nancy Hatch at 503-378-3895, toll-free in Oregon at 800-221-8035, or email to Nancy.Hatch@energy.oregon.gov and request to be added to the hardcopy notice list.

Accessibility information: The Oregon Department of Energy is committed to accommodating people with disabilities. If you require any special physical or language accommodations, or need information in an alternate format, please contact Nancy Hatch at 503-378-3895, toll-free in Oregon at 800-221-8035, or email to Nancy.Hatch@energy.oregon.gov

Contested Case Details:

A ten minute video describing the Type A Amendment Contested Case threshold is available at <https://www.youtube.com/watch?v=uBBGGhRXHu8>

Eligibility to Request a Contested Case: (OAR 345-027-0371(5)):

Only those persons, including the certificate holder, who commented in person or in writing on the record of the public hearing described in OAR 345-027-0367 may request a contested case proceeding on the proposed order for an amendment to the site certificate. To properly raise an issue in a request for a contested case proceeding on the proposed order for an amendment, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the DPO public hearing, unless the Department did not follow the requirements of OAR 345-027-0367, or unless the action recommended in the proposed order differs materially from the DPO, including any recommended conditions of approval, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the DPO public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Council may not grant a contested case proceeding for that issue. To have raised an issue with sufficient specificity, the person must have presented facts at the DPO public hearing that support that person's position on the issue.

Deadline to submit a Request for a Contested Case: (OAR 345-027-0371(6)): Persons eligible to request a contested case must submit a written request to the

Department. To be considered, all requests for contested case must be received no later than **September 8, 2023 at 5:00 p.m. Pacific** to be considered. Requests may be submitted via U.S. mail or email to the following address:

Oregon Department of Energy
Attn: Kellen Tardaewether
550 Capitol Street NE
Salem, OR 97301
Email: Kellen.TARDAEWETHER@energy.oregon.gov

If the Department does not receive the request by **September 8, 2023 at 5:00 p.m. Pacific** the requesting person(s) will have waived any right to participate in a contested case, if one is granted.

Contents of a Request for Contested Case (OAR 345-027-0371(6)):

Contested case requests must include:

- (a) The person's name, mailing address and email address and any organization the person represents;
- (b) A short and plain statement of the issue or issues the person desires to raise in a contested case proceeding;
- (c) A statement that describes why the Council should find that the requester properly raised each issue, as described in section (7) of OAR 345-027-0371, including a specific reference to the person's prior comments to demonstrate that the person raised the specific issue or issues on the record of the public hearing, if applicable;
- (d) A statement that describes why the Council should determine that each identified issue justifies a contested case, under the evaluation described in section (9) of OAR 345-027-0371;
- (e) Name and address of the person's attorney, if any;
- (f) A statement of whether the person's request to participate in a contested case is as a party or a limited party, and if as a limited party, the precise area or areas in which participation is sought;

(g) If the person seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the person's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(h) If the person seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the person's qualifications to represent such public interest; and

(i) A statement of the reasons why others who commented on the record of the public hearing cannot adequately represent the interest identified in subsections (h) or (i) of this section.

A template Request for Contested Case is provided as an attachment to this Notice, which can be used for submission of a Request in accordance with the submittal requirements outlined in this Notice (OAR 345-027-0371(6)).

EFSC consideration of Requests for a Contested Case
(OAR 345-027-0371(7)-(9))

Before considering whether an issue justifies a contested case proceeding, the Council must determine that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request. To determine that a person properly raised each issue included in the request, the Council must find that:

(a) The person making the contested case request raised the issue on the record of the public hearing described in OAR 345-027-0367 with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue;

(b) The Department did not follow the requirements of OAR 345-027-0367; or

(c) If the action recommended in the proposed order, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, the contested case request

identified new issues that are related to such material differences.

If the Council finds that the person requesting a contested case failed to comment in person or in writing on the record of the public hearing or failed to properly raise any issue, the Council must deny that person's contested case request. If the Council finds that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised one or more issues, the Council's determination of whether an issue justifies a contested case must be limited to those issues the Council finds were properly raised.

After identifying the issues properly raised the Council must determine whether any properly raised issue justifies a contested case proceeding on that issue. **To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.** If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

ATTACHMENT 1

Summary of Material Changes from DPO to Proposed Order

Material changes include substantive changes to conditions of approval, an action, or recommendation; or a reversal of an action or recommendation. Material changes do not include updated or revised findings of fact unrelated to a change in a condition.

The following differed materially between the DPO and the Proposed Order

- Recommended Amended Public Services Condition 3 (GEN-PS-01): Council directed adoption of certificate holder proposed 3-day notice to landowners added to Recommended Amended Public Services Condition 3, this revision can be found in Proposed Order Section to III.M., Public Services, III.M.1.h Traffic Safety; and in the Draft Amended Site Certificate.

- This template was developed by the Oregon Department of Energy (Department) and is provided as a courtesy for persons seeking to request a contested case on a proposed amendment to a site certificate. Petitioners are not required to use the template, but use is recommended to ensure requests contain required information and can be efficiently reviewed by Department staff and Council.
- Please contact the Department representative, Kellen Tardaewether, to request a Word version of the template.

Request for a Contested Case (Template)

Description	Explanation of Information	Petitioner Information
Petitioner Name:	Provide petitioner first and last name.	
Petitioner Addresses:	Provide physical mailing address and e-mail address, if available.	
Petitioner Attorney:	Provide name and address of attorney, if any.	
Authorized Representative:	Provide name of any person(s) authorized by you to represent your issue(s) or confirm your intent to act as an authorized representative for the organization you intend to represent.	
Name of Any Organization Petitioner Represents:	Confirm and provide the name of any organization(s) you represent in this proceeding, in addition to yourself.	
Party Status Requested (Limited or Full):	Confirm whether you are seeking to participate as a party or limited party and if as a limited party the precise area or areas in which you seek to participate.	
If seeking to represent a personal interest:	Provide a detailed statement of your personal interest (economic or otherwise).	

Request for a Contested Case (Template)

Description	Explanation of Information	Petitioner Information
	Explain how your personal interest may be affected by the results of the proceeding.	
	Provide reasons why existing parties to the proceeding cannot adequately represent the personal interest you have identified.	
If seeking to represent a public interest:	Provide a detailed statement of the public interest you intend to represent.	
	Explain how such public interest would be impacted by the outcome of the proceeding.	
	Provide a reference to your qualifications to represent such public interest(s).	
	Provide reasons why existing parties to the proceeding cannot adequately represent the public interest(s) you have identified.	
Issue Information		
Instructions: Provide information for Items (1) – (2) below for each issue requested for review in the proceeding.		
Issue 1		
Issue Statement:	Provide a short and plain statement of each issue you wish to raise in a contested case, including references to any facts, analysis or	

Request for a Contested Case (Template)

Description	Explanation of Information	Petitioner Information
	<p>recommendations presented in the Proposed Order or Request for Amendment with which you take issue. Please reference any rules or statutes you believe are relevant to the issue(s) you are raising.</p> <p><u>Examples:</u> Issue #1. The evaluation of XX in the [Request for Amendment and/or Proposed Order] is not sufficient to demonstrate the project complies with XX [statute and/or rule] because [briefly summarize your position]; OR Issue #1. I contend the certificate holder does not meet [cite specific Council standard or applicable law] because [provide brief explanation of why you believe certificate holder does not meet the cited standard or law]).</p>	
<p>Provide date of DPO comments where issue was previously cited:</p>	<p>For each issue identified in your Issue Statement(s), provide the date and manner (verbal or written) in which you raised the issue(s) on the record of the Draft Proposed Order.</p>	
<p>Issue 2 Instructions: If more than 1 issue, continue to provide responses to (1) and (2) for each additional issue requested for review in the proceeding.</p>		
<p>Issue Statement:</p>	<p>Provide a short and plain statement of each issue you wish to raise in the contested case, including references to any facts, analysis or recommendations presented in the Proposed Order or Request for Amendment with which you take issue. Please reference any rules or statutes you believe are relevant to the issue(s) you are raising.</p>	

Request for a Contested Case (Template)

Description	Explanation of Information	Petitioner Information
	<p><u>Examples:</u> Issue #1. The evaluation of XX in the [Request for Amendment and/or Proposed Order] is not sufficient to demonstrate the project complies with XX [statute and/or rule] because [briefly summarize your position]; OR Issue #1. I contend the certificate holder does not meet [cite specific Council standard or applicable law] because [provide brief explanation of why you believe certificate holder does not meet the cited standard or law]).</p>	
<p>Provide date of DPO comments where issue was previously cited:</p>	<p>For each issue identified in your Issue Statement(s), provide the date and manner (verbal or written) in which you raised the issue(s) on the record of the Draft Proposed Order.</p>	

To: Energy Facility Siting Counsel Members Friday, July 21, 2023

From: Irene Gilbert, as an Individual citizen

Subject: Council Process Concerns. These issues are being presented by me as an individual and have not been approved by any groups which I am affiliated with.

I am requesting that the Energy Facility Siting Counsel make the following requests of the Oregon Department of Energy

1. That scheduling provides adequate time for counsel members to receive, read, and research public comments they receive.
2. That the Oregon Department of Energy provide statements in public notices that communicate that changes to existing site certificate conditions will be reviewed in regards to their impacts on the entire development.
3. That notice include a description of Amendments that communicates that the changes are significant when they are.
4. Rather than Counsel making comments that are based upon assumptions regarding a commenter or their comment which may impact counsel decisions, I am requesting that they be posed as a question to the individual.

NARRATIVE REGARDING THE ABOVE REQUESTS

TIMELINES FOR COUNCIL REVIEW OF PUBLIC COMMENTS

As frustrating as it is, I continue to bring issues before the Council in the hopes that at some point Counsel will give weight to the public comments rather than relying upon interpretations and recommendations of the Oregon Department of Energy and the developer. Counsel members should at least give the public the courtesy of reading their comments and require scheduling that allows them to read the objections and compare them with the rules and statutes that the counsel is to apply. When public comment hearings are held the day prior to the Counsel being presented with the Oregon Department of Energy Recommendations, the potential that public comments will be given due consideration is slim at best. I applaud Counselor Devlin and Counselor Beier for stating the obvious fact that they would not have enough time to read and consider the written comments submitted by the public regarding Amendment 1 of the B2H Site Certificate prior to the counsel meeting the following day which started at 8:30 a. m. The counsel has the authority to require that ODOE schedule

meetings to review Draft Site Certificates and public comments in a timeframe that allows members to make up their own minds as to their legitimacy.

A process where council members must rely upon the Oregon Department of Energy staff to interpret, restate and recommend that public comments should not be adopted is both discouraging and disrespectful to members of the public who often struggle for many hours in an effort to communicate to counsel areas where a draft site certificate fails to comply with Counsel rules. Many of these citizens are not familiar with the EFSC contested case process, may or may not have had any experience with government bureaucracy and often are stressed and frightened by the impacts that the proposed development will have on them and things they value. Some appear trying to protect resources that families have spent generations protecting that will be damaged or destroyed. The majority of the parties simply want developers to compensate citizens and the public at large for the damages to such things as wildlife, historic properties, protected areas, local economies, or because they are being placed at risk of wildfire, noxious weed infestations, noise exceedances, etc. Citizens and local agencies will bear the burden for the impacts of energy developments. That burden should not be increased because the developer is allowed to avoid providing compensation or resources to compensate for damages.

I understand why developers want site certificates that require minimal mitigation for impacts to private property owners, ratepayers and public institutions. They typically work for their stockholders or large multinational companies and must make money to satisfy them.

I understand ODOE's motivation for supporting the developers as they did by making recommendations that counsel deny every contested case on the Original Site Certificate for one recent decision. ORS 469.421 requires the Oregon Department of Energy Siting Division to charge developers and facility owners the entire cost of their budget. They are reliant on the developers of Site Certificates they approve to pay their salaries and maintain the Siting Division. If they were not approving site certificates and having energy developments built, they would lose their jobs.

What I do not understand is why the Council members would accept the recommendations and restatement of arguments provided by ODOE and the developers without actually doing their own evaluation of public comments and

references provided or providing opportunity for the public to correct errors, misstatements of issues or when the department fails to present arguments made by the public. I encourage you to have a discussion regarding above request Number 1.

PROCEDURAL QUESTION AND RECOMMENDATION REGARDING WHETHER THE PUBLIC NOTICES ACCURATELY DESCRIBES THE ISSUES AND PROCESSES THAT WILL OCCUR

I submit the following:

On Page 1 the notice states reviewed at the July 18, 2023 counsel meeting states that the amendment includes re-location of transmission line route segments, changes in some new and substantially modified roads and “amendments of site certificate language to support implementation and interpretation”.

I question that a statement such as this communicates to the public the fact that changes in site certificate conditions include changing the requirements or allows exceptions to previously approved requirements.

On page 2, description of amendment request it says that the request adds area to move facility components and “also seeks approval to modify condition language for several conditions (See RFA1 Attachment 6-1) I question that a statement such as this communicates that there are site certificate changes that are entirely different as a result of the modification of the language.

On page 4 of the Public Notice the first paragraph states, **“Review for RFA1, Council must determine whether the preponderance of evidence on the record supports that the PORTIONS OF THE FACILITY WITHIN THE AREA ADDED TO THE SITE BOUNDARY BY THE AMENDMENT COMPLIES WITH ALL LAWS AND COUNCIL STANDARDS APPLICABLE TO AN ORIGINAL SITE CERTIFICATE application, and the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.”**

The Oregon Department of Energy told the council that their rules do not require specificity in their notices and that their public notice does not state that the public cannot respond to anything they like. When a notice states that what the counsel will be evaluating is whether the portions of the facility added to the site boundary comply with counsel rules, it is reasonable to believe that based upon

the decision process for allowing a contested case this is the only area where any changes could form the basis of a contested case. Commenting on other impacts would be a waste of time.

To Address this issue, please discuss and consider implementing recommendations 2 and 3 above.

REGARDING A COMMENT REGARDING WHETHER OR NOT I WAS AWARE OF A COUNCIL RULE WHICH OCCURRED AT THE JULY 18, 2023 PUBLIC HEARING

At that meeting a Counselor stated that she did not believe me when I stated the reason for requesting time to submit written comment on a topic in writing was because I was unaware of the opportunity to comment regarding impacts to the entire site when previously approved site certificate conditions were changed during an amendment. When counsel makes assumptions absent documentation that are likely to impact the results of a decision and an individual is present, I recommend that Counsel provide opportunity for the individual to respond. My father is responsible for my ethics and honesty is a core value I have. I do not knowingly lie. If I misstate it is because I lack understanding or knowledge. When I said that I was unaware until 2 days prior to the council meeting that comments regarding changes in previously approved site certificate conditions allowed comment on how that change impacts the entire development, that was exactly what I meant. I do not recall having an Amendment request that included both the addition of area as well as substantial changes in previous site certificate conditions. Typically they address increased area, new processes, changes in ownership, dividing the site into two or more developments, or changes to timeframes as the only issue.

In spite of following counsel for a dozen years, my experience with contested cases regarding amended site certificates is very limited. ODOE has a long history of denying contested cases on Amendment Requests and I would be surprised if they have allowed more than a half a dozen such requests in the past dozen years. I encourage council to request from ODOE a list of any Site Certificate Amendments where I was allowed to comment or understood that I have a right to comment to support a future contested case request based upon changes to previously approved site certificate conditions that would impact the entire site.

The reason I went back to the actual language of the rule 2 days prior to the public hearings was because of the significance of the changes in previous Site Certificate Conditions. Upon reading the rule, I realized that the changed site certificate conditions should be evaluated based upon impacts to the entire facility in spite of the statement to the contrary in the Public Notice.

The notice failed to communicate either the significance of the changed site certificate conditions or the fact that the council is required to evaluate the changed conditions in relation to their impacts on the entire facility. I do not believe at this point it would be productive for me to contest this issue. I am, however, requesting that counsel include in their next meeting a discussion of this memo and that individual council members consider implementing Suggestion 4 when they question statements of a party or a developer.

I also encourage counsel to fact check my comments as well as those of developers which are made during EFSC meetings.

For example, please research whether or not I would be correct were I to state that a bond is not required because developers maintain insurance or other methods that would address the need to compensate the public for costs of sight restoration in the event that the developer fails to do so that would not rely upon ratepayers and the public to pay for site restoration.

Respectfully submitted,
Irene Gilbert
2310 Adams Ave.
La Grande, Oregon 97850