

Oregon Department of **ENERGY**

Protected Areas, Scenic
Resources, and
Recreation Standards
Rulemaking
Workshop #1

July 28, 2021



Agenda

- 1:00 pm: Overview of Project & Rulemaking Process
- 1:30 pm: Opportunity for Comment/Identification of New Issues
- 2:00 pm: Discussion of Issues – Applicability of Amended Standards
- 2:45 pm: Break
- 3:00 pm: Discussion of Issues – Scope of Required Findings
- 3:45 pm: Closing remarks and next steps

Need and Authority for Rules

- ORS 469.470(2) requires the the Council to adopt standards for the siting, construction, and operation of energy facilities. Standards adopted include:
 - OAR 345-022-0040, Protected Areas
 - OAR 345-022-0080, Scenic Resources
 - OAR 345-022-0100, Recreation
- Rulemaking is needed to address several areas of rule that are out of date, ambiguous, unclear, or inconsistent with the Council's review processes.

Scope and Objectives

- Staff recommends that the scope of this rulemaking be limited to issues related to the three standards and associated information requirements.
- Based on preliminary analysis and recommendations, objectives are to:
 - Ensure that the language of the Standards clearly identifies important resources and values the standards are intended to protect.
 - Ensure that the standards are consistent with ORS 469.310.
 - Improve efficiency and effectiveness of Council's review processes and procedures by resolving ambiguity, lack of clarity, and inconsistency in rule.

Potential Impacts on Stakeholders

- Changes to standards could result in some potential fiscal or economic impacts on applicants if resources protected under the standards are expanded.
- Impacts would only apply to future applications and would be highly dependent on the size, type, and location of a proposed facility.
- Some reductions in the overall costs associated with the application process review could result from resolving ambiguity, lack of clarity, and inconsistency in rules.

Rulemaking Process



Summary of Staff Recommendations

#	Description	Staff Recommendation
1	Rules do not require manager a protected area to be given notice of an NOI or ASC.	<ul style="list-style-type: none"> Require public notice to be sent to manager of Protected Area identified in NOI or ASC. Amend OAR 345-020-0011 and 345-021-0010
2	The Scenic Resources and Recreation standards limit the scope of Council's findings to resources in the analysis area identified in the project order. The Protected Area Standard contains no similar limitation.	Amend OAR 345-022-0080(1) and 345-022-0100(1) to remove reference to project order.
2.1*	Study areas for impacts to Protected Areas, Recreation, and Scenic Resources may be too large, especially for renewable energy facilities.	More Input Needed

*Issue raised in whole or part by stakeholders

Summary of Staff Recommendations

	Description	Staff Recommendation
3	The Protected Areas Standard refers to “designations in effect as of May 11, 2007.”	More input needed.
4	The Protected Areas Standard contains a list of designation categories and specific protected areas that may be incomplete or out of date.	Amend OAR 345-022-0040(1) to update protected areas categories.
5	The Protected Areas Standard does not list Outstanding Resource Waters as Protected Areas.	Make no changes
6	The Protected Areas Standard may permit a transmission line or natural gas pipeline to be sited in a protected area when other lesser impact alternatives are available.	Amend rule to clarify OAR 345-022-0040(2)

Summary of Staff Recommendations

	Description	Staff Recommendation
7*	The Scenic Resources standard does not specify that scenic resources and values identified as significant or important in state land management plans are protected.	Amend OAR 345-022-0080(1) to include state plans, more input needed on additional recommendations.
8*	The application of new rules or standards to an Application for Site Certificate that is under review may prejudice the applicant.	More input needed
9*	More specificity in how the Council evaluates impacts to scenic and recreation resources, and protected areas may be needed.	More input needed
10*	The criteria for identifying important recreational opportunities may be unclear	More input needed

*Issue raised in whole or part by stakeholders

Opportunity to Raise New Issues

- Are there additional issues that should be addressed in this rulemaking?
- Are there any additional alternatives that you would like the Council to consider?

Additional comments and recommendations can be sent to:
EFSC.RULEMAKING@energy.oregon.gov

Applicability of Updated Rules & Standards (Issue 8)

Issue description: The application of new rules or standards to an Application for Site Certificate that is already under review may prejudice the applicant.

Discussion:

- What, if any, point in the process is the appropriate time to cut off rule changes that apply to a facility under review?
- Should principals of vested rights apply to the siting review process? If so, how?
- Should rule changes that lessen information/substantive requirements be treated differently than changes that increase requirements?

Applicability of Updated Rules & Standards (Issue 8)

Alternatives:

1. Take no specific action (Council's determination of compliance is based on the standard in effect at the time the Council makes its decision.)
2. Adopt provisions in general each rule or standard affected by rulemaking that specifies that newly adopted criteria or requirements will not apply to the review of any applications which is determined to be complete on or before the effective date of the rule.
3. Amend general standard to specify the applicability of Council standards is determined through the project order.

Scope of Required Findings (Issue 2)

Issue description: The Council's Scenic Resources and Recreation Standards limit the scope of Council's findings to resources in the appropriate analysis area identified in the project order. The Protected Area Standard contains no similar limitation.

Discussion Questions:

- Should the council's findings be limited to resources within the analysis area?
- Should there be more guidance/directives about how analysis areas are established and when they should be amended?

Required Findings

- OAR 345-022-0040: “* * * taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below.”
- OAR 345-022-0080: * * * taking into account mitigation, [the design, construction and operation of the facility] are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located *within the analysis area described in the project order*.
- OAR 345-022-0100: * * * taking into account mitigation, [the design, construction and operation of the facility] are not likely to result in a significant adverse impact to important recreational opportunities *in the analysis area as described in the project order*.

Scope of Required Findings (Issue 2)

Alternatives:

- 1. Make no changes.
- 2. Amend OAR 345-022-0040(1) to limit the scope of Council's findings for impacts to protected areas located within the analysis area described in the Project Order.
- 3. Amend OAR 345-022-0080(1) and 345-022-0100(1) to remove the limitation on the scope of Council's findings to allow, but not require, the Council to make findings for impacts on scenic resources and recreational opportunities outside the analysis area described in the Project Order.

Future Workshops

Date and Time	Location	Agenda
Wednesday, August 18, 2021, 1-4 pm	Webex	Protected Areas <ul style="list-style-type: none">•Notification of Protected Area Managers•Protected Areas Designations•Linear Facilities & Exceptions
October 2021 TBD	TBD	Scenic Resources and Recreational Opportunities <ul style="list-style-type: none">•Identification of Scenic Resources and Recreational Opportunities•Study Areas and Analysis Areas•Visual Impacts Analyses

Questions & Comments

Additional comments and recommendations
can be sent to:

EFSC.RULEMAKING@energy.oregon.gov