

# **Protected Areas, Scenic Resources, and Recreation Rulemaking Project**

## **Draft Proposed Rules**

**March 4, 2022**

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NOTE: This document is provided for information only and is not notice of rulemaking action by the Energy Facility Siting Council. Draft rule language is subject to change based on input from the Council, staff, and stakeholders. For ease of use, only excerpts of the affected rules are provided, full text of the current rules can be found at the [Oregon Administrative Rules Database](#).

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### **DIVISION 01 – GENERAL PROVISIONS**

#### **345-001-0010 - Definitions**

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:

\* \* \*

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

\*\*\*\*\*

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

- (a) A national park or another component of the National Park System described under 54 U.S.C. 100501;
- (b) A national monument established under 54 U.S.C. 320201 or an Act of Congress;
- (c) A component of the National Wilderness Preservation System described under 16 U.S.C 1131 et seq.;
- (d) A river designated as a component of, or potential addition to, the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.;
- (e) A component of the National Wildlife Refuge System described under 16 U.S.C. 668dd;
- (f) A component of the National Fish Hatchery System described under 16 U.S.C. 760aa;
- (g) A congressionally designated national recreation area, national scenic area, or special resources management unit;
- (h) A wilderness study area established under 43 U.S.C. 1782;
- (i) Land designated in a federal land management plan as:
  - (A) An Area of critical environmental concern;
  - (B) An Outstanding natural area;
  - (C) A Research natural area;

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(D) An Experimental Forest or Range; or

(E) A Special Interest Area;

(j) A state park, wayside, or other area owned or managed by the Oregon Department of Parks and Recreation for scenic, historic, natural, cultural or recreational purposes under ORS 390.121

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

(l) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;

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

(n) A component of the Oregon Scenic Waterways System designated under ORS 390.805 to 390.925;

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

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

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

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

\* \* \* \* \*

(5152) “Reviewing agency” means any of the following officers, agencies or tribes:

(a) The Department of Environmental Quality;

(b) The Water Resources Commission and the Water Resources Director through the Water Resources Department;

(c) The Fish and Wildlife Commission through the Oregon Department of Fish and Wildlife;

(d) The State Geologist;

(e) The Department of Forestry;

(f) The Public Utility Commission of Oregon;

(g) The Oregon Department of Agriculture;

(h) The Department of Land Conservation and Development;

(i) The Oregon Department of Aviation;

(j) The Pacific Northwest Electric Power and Conservation Planning Council;

(k) The Office of State Fire Marshal;

(l) The Department of State Lands;

(m) The State Historic Preservation Office;

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- (n) Any other agency identified by the Department;
- (o) Any tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility;
- (p) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services;
- (q) Any special advisory group designated by the Council under ORS 469.480; and
- (r) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.

| **(5253)** "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

\* \* \* \* \*

| **(5960)** "Study area" means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

- (a) For impacts to threatened and endangered plant and animal species, 5 miles.
- (b) For impacts to scenic resources and to public services, 10 miles.
- (c) For land use impacts and impacts to fish and wildlife habitat, one-half mile.
- (d) For impacts to recreational opportunities, 5 miles.
- (e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.
- (f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.
- (g) The distances stated in subsections (a) and (d) above do not apply to pipelines or transmission lines.

\* \* \* \* \*

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### **DIVISION 20 - NOTICE OF INTENT**

#### **345-020-0011 - Contents of a Notice of Intent**

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

\* \* \* \*

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

\* \* \*

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

- (A) The proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;
- (B) The proposed locations of the corridors the applicant has identified under subsection (d) in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;
- (C) The study areas for the proposed facility as defined in OAR 345-001-0010;
- (D) The topography of the study areas including streams, rivers, lakes, major roads and contour lines;
- (E) All protected areas in the study area as defined in OAR 345-001-0010 for impacts to protected areas;
- (F) The location of any potential waters of the state or waters of the United States that are on or adjacent to the site; and
- (G) For energy generation facilities, the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services.

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\* \* \* \* \*

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

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

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

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

(B) The basis for protection of the area, by reference to a specific subsection under OAR 345-001-0010(49); and

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

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

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

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

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

\* \* \* \* \*

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### **DIVISION 21 - APPLICATION FOR SITE CERTIFICATE**

#### **345-021-0010 - Contents of an Application**

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

\* \* \* \* \*

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

- (A) A description of the proposed energy facility, including as applicable:
  - (i) The nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300;
  - (ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy;
  - (iii) A site plan and general arrangement of buildings, equipment and structures;
  - (iv) Fuel and chemical storage facilities, including structures and systems for spill containment;
  - (v) Equipment and systems for fire prevention and control;
  - (vi) For thermal power plants:
    - (I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy;
    - (II) Process flow, including power cycle and steam cycle diagrams to describe the energy flows within the system;
    - (III) Equipment and systems for disposal of waste heat;
    - (IV) The fuel chargeable to power heat rate;

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- (vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;
- (viii) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;
- (B) A description of major components, structures and systems of each related or supporting facility;
- (C) The approximate dimensions of major facility structures and visible features;
- (D) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, a corridor selection assessment explaining how the applicant selected the corridors for analysis in the application. In the assessment, the applicant must evaluate the corridor adjustments the Department has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant must discuss the reasons for selecting the corridors, based upon evaluation of the following factors:
  - (i) Least disturbance to streams, rivers and wetlands during construction;
  - (ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;
  - (iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads and existing pipeline or transmission line rights-of-way;
  - (iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;
  - (v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;
  - (vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist;
  - (vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards;
  - (viii) Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use;

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(E) If the proposed energy facility is a pipeline or transmission line or has, as a related or supporting facility, a transmission line or pipeline of any size:

- (i) The length of the pipeline or transmission line;
- (ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened;
- (iii) If the proposed transmission line or pipeline corridor follows or includes public right-of-way, a description of where the transmission line or pipeline would be located within the public right-of-way, to the extent known. If the applicant proposes to locate all or part of a transmission line or pipeline adjacent to but not within the public right-of-way, describe the reasons for locating the transmission line or pipeline outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the transmission line or pipeline outside the public right-of-way, based on those criteria;
- (iv) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day and the diameter and location, above or below ground, of each pipeline;
- (v) For transmission lines, the rated voltage, load carrying capacity, and type of current and a description of transmission line structures and their dimensions; and

(F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction.

Construction is defined in OAR 345-001-0010. The applicant must describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant must include an estimate of the cost of that work. For the purpose of this exhibit, “work on the site” means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor, that the applicant anticipates or has performed as of the time of submitting the application.

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

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

(B) A description of the location of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the total land area (in acres) within the proposed site boundary, the total area of permanent disturbance, and the total area of temporary disturbance. If a proposed pipeline or transmission line is to follow an

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existing road, pipeline or transmission line, the applicant must state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known; and

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

\* \* \* \*

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

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

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

(ii) and tThe basis for protection by reference to a specific subsection under OAR ~~345-022-0040(1)001-0010(49); and~~

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

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

(C) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:

(i) Noise resulting from facility construction or operation;

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

(iii) Water use during facility construction or operation;

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

(v) Visual impacts of facility structures or plumes; and

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

\* \* \* \*

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

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

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

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

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

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

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

(ii) Changes in landscape character or quality due to facility structures Visual impacts of facility structures or plumes; and

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

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

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

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

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

\* \* \* \* \*

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

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

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

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- (i) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation;
- (ii) Noise resulting from facility construction or operation;
- (iii) Increased traffic resulting from facility construction or operation;
- (iv) Visual impacts of facility structures or plumes;

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

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

~~(DE)~~ A map of the analysis area showing the locations of important recreational opportunities identified in (A) in relation to the proposed facility; and

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

\* \* \* \* \*

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### DIVISION 22 - GENERAL STANDARDS FOR SITING FACILITIES

#### 345-022-0040 - Protected Areas

(1) ~~Except as provided in sections (2) and (3), To issue a site certificate, the Council shall must find:~~

- (a) ~~The not issue a site certificate for a proposed facility will not be located within the boundaries of a protected areas listed below designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363.~~
- (b) ~~To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impacts to the areas listed below a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363.~~

**[NOTE: Staff recommends the Council move the definition of "protected area" to OAR 345-001-0010. The mark-up language is retained here for reference.]**

OAR 345-001-0010(X) References As used in this rule, to "protected areas" means an area designated for protection under federal or state statutes or regulations as one or more of the following are to the designations in effect as of May 11, 2007:

- (a) ~~A National park, or another component of the National Park System described under 54 U.S.C. 100501 including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;~~
- (b) ~~A National monuments, established under 54 U.S.C. 320201 or an act of Congress including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;~~
- (c) ~~A component of the National Wilderness Preservation System areas established pursuant to The Wilderness Act, described under 16 U.S.C. 1131 et seq.; and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;~~
- (d) ~~A river designated as a component of, or potential addition to, the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.;~~
- (e) ~~A component of the National and state wildlife Refuge System described under 16 U.S.C. 668dd; including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;~~
- (f) ~~National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;~~

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- (f) A component of the National and state fish hatcheries~~Fish Hatchery System described under 16 U.S.C. 760aa, including but not limited to Eagle Creek and Warm Springs;~~
- (g) A congressionally designated National recreation area, and national scenic areas, or special resources management unit~~including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;~~
- (h) A wilderness study area established under 43 U.S.C. 1782;
- (i) Land designated in a federal land management plan as:
  - (A) An Area of Critical Environmental Concern;
  - (B) An Outstanding Natural Area;
  - (C) Research Natural Area;
  - (D) An Experimental Forest or Range; or
  - (E) A Special Interest Area;
- (j) A state parks and waysides, or other area as listed owned or managed by the Oregon Department of Parks and Recreation for scenic, historic, natural, cultural or recreational purposes under ORS 390.121 and
- (k) the The Willamette River Greenway created under ORS 390.310 to 390.368;
- (l) A State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to under ORS 273.581;
- (m) The State estuarine sanctuaries, including but not limited to South Slough National Estuarine Sanctuary Research Reserve, described under ORS 273.553, OAR Chapter 142;
- (n) A component of the Oregon Scenic waterways Waterways System designated pursuant to under ORS 390.805 to 390.826925, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;
- (o) A state wildlife area, refuge, or management area established under ORS chapter 496;
- (p) A state fish hatchery established under ORS chapter 496 or 506;
- (q) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;
- (r) An Agricultural experimental stations, experimental area, or research center established by the College of Agriculture, Oregon State University under ORS chapter 567, including but not limited to:

Coastal Oregon Marine Experiment Station, Astoria

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

~~Agriculture Research and Extension Center, Hermiston~~

~~Columbia Basin Agriculture Research Center, Pendleton~~

~~Columbia Basin Agriculture Research Center, More~~

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

~~East Oregon Agriculture Research Center, Union~~

~~Malheur Experiment Station, Ontario~~

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

~~Oregon Agriculture Research Center, Squaw Butte Central~~

~~Oregon Experiment Station, Madras~~

~~Central Oregon Experiment Station, Powell Butte~~

~~Central Oregon Experiment Station, Redmond~~

~~Central Station, Corvallis~~

~~Coastal Oregon Marine Experiment Station, Newport~~

~~Southern Oregon Experiment Station, Medford~~

~~Klamath Experiment Station, Klamath Falls;~~

(nr) ~~A~~ Research forests established by the College of Forestry, Oregon State University under ORS 526.215, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

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

(p) State wildlife areas and management areas identified in OAR chapter 635, Division 8

(2) Notwithstanding section (1)(a), the Council may issue a site certificate for:

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

(b) ~~Notwithstanding section (1), the Council may issue a site certificate for surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring~~

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wells and individual wellhead equipment and pumps located in a protected area, if the Council determines that other alternative routes or sites have been studied and determined by the Council to be unsuitable.

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

- (a) A transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher; or
- (b) A natural gas pipeline routed within 500 feet of an existing utility right of way containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

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

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

### 345-022-0080 - Scenic Resources

(1) Except for facilities described in section (2), toTo issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse visual impacts to significant or important scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

(2) Notwithstanding section (1), Thethe Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). In issuing such a site certificate, However, the Council may impose conditions of approval to minimize the potential significant adverse visual impacts from the design, construction, and operation of the facility on significant or important scenic resources. apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) A scenic resource is considered to be significant or important if it is identified as significant or important in a land use management plan adopted by one or more local, tribal, state, or federal government or agency.

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

Stat. Authority: ORS 469.470, ORS 469.501

# **Protected Areas, Scenic Resources, and Recreation Rulemaking Project**

## **Draft Proposed Rules**

**March 4, 2022**

Stat. Implemented: ORS 469.501

### **345-022-0100 - Recreation**

(1) ~~Except for facilities described in section (2), to~~ To issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities ~~in the analysis area as described in the project order.~~

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

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

(2) ~~Notwithstanding section (1), The~~ the Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

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

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501