



Marcia Grail, Chair ■ Kent Howe, Vice-Chair ■ Hanley Jenkins ■ Jordan Truitt ■ Cynthia Condon ■ Perry Chocktoot

## Energy Facility Siting Council Meeting Minutes Friday, February 25, 2022, 8:30 a.m.

- A. Consent Calendar (Action Item & Information Item)<sup>1</sup>
- B. Obsidian Solar Center (Information Item, Hearing and Possible Action Item)<sup>2</sup>
- C. Public Comment Period (Information Item)<sup>3</sup>
- D. Protected Areas, Scenic Resources and Recreation Standards Rulemaking Project Update (Information Item)<sup>4</sup>
- E. Public Comments Web Portal Update (Information Item)<sup>5</sup>

The meeting materials presented to Council are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

**Call to Order:** The meeting was called to order on Friday, February 25, 2022, at 8:30 a.m. by Chair Grail.

**Roll Call:** Chair Marcia Grail, Vice-Chair Kent Howe, Council Members Cynthia Condon, Hanley Jenkins, Perry Chocktoot and Jordan Truitt were present.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett; Senior Policy Advisor, Sarah Esterson; Senior Siting Analyst Kellen Tardaewether; Siting Policy Analyst and EFSC Rules Coordinator, Christopher M. Clark, Operations and Policy Analyst, Wally Adams; Administrative Specialist, Nancy Hatch, and Fiscal Analyst, Sisily Fleming. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe counsel to EFSC and Senior Assistant Attorney General Jesse Ratcliffe, counsel to EFSC for the Obsidian Solar Center contested case were also present.

**Agenda Modifications were not requested.**

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<sup>1</sup> Audio/Video for Agenda Item A=00:02:40 – 2022-02-25-EFSC-Meeting-Audio

<sup>2</sup> Audio/Video for Agenda Item B=00:18:40– 2022-02-25-EFSC-Meeting-Audio

<sup>3</sup> Audio/Video for Agenda Item C=05:10:50– 2022-02-25-EFSC-Meeting-Audio

<sup>4</sup> Audio/Video for Agenda Item D=05:15:50 – 2022-02-25-EFSC-Meeting-Audio

<sup>5</sup> Audio/Video for Agenda Item E=07:00:13– 2022-02-25-EFSC-Meeting-Audio

- A. Consent Calendar (Action Item & Information Item)<sup>6</sup>** – Approval of January 28, 2022, meeting minutes; Council Secretary Report; and other routine Council business.

### **Consideration of the January 28,2022 Meeting Minutes**

Council Member Jenkins motioned that the Council adopt the January 28, 2022, meeting minutes with the following statement added to the end of Paragraph 4 on Page 11:

*Council Member Condon expressed concern about the time it has taken for the satisfactory resolution of the issues identified in the complaint submitted by the farmers.*

Council Member Condon seconded the motion.

Motion carried unanimously.

### **Council Secretary Report**

Secretary Cornett offered the following comments during his report to the Council.

#### Project Updates

- **Perennial Wind Chaser Station**  
On February 2, 2022, Perennial Power Holdings issued a press release indicating they would terminate their site certificate for the Perennial Wind Chaser Station, the 415 MW natural gas fired power plant in Umatilla County just west of Hermiston. A proposed retirement plan or a request to terminate their site certificate is expected soon.
- **Biglow Canyon Wind Farm**  
In the past two weeks, there were two reportable incidences at the Biglow Canyon Wind Farm in Sherman County. A blade liberation event occurred that did not result in injuries or property damage, and the landowners have been engaged and informed. Portland General Electric (PGE) has shut down all the Phase 1 turbines while they investigate the cause of the failure. The second incident was a transformer failure, resulting in a release of approximately 166 gallons of non-PCB transformer oil onto the surrounding gravel. PGE has contracted with US Department of Ecology to assist with the cleanup and have reported the incident to DEQ.
- **Carty Generating Station**  
On February 3, 2022, the Department received Request for Amendment #3 from PGE for the Carty Generating Station. Amendment #3 requests review under the Type B process to extend the beginning and ending construction timeframes for the solar component by 3 years. The amendment request is posted to the project website and the Department sent a notice of the receipt of the amendment request and the Type B review request on February 16<sup>th</sup>.
- **Nolin Hills Wind Power Project**  
The Application for Site Certificate was deemed complete on January 31, 2022. Kate Sloan, the project lead, held a virtual public information meeting on the evening of February 16, 2022, and 17 people, in addition to ODOE Staff, Council Member Condon and the applicant team, attended the meeting. Recordings are posted to the project page on the Department’s website.
- **Golden Hills Wind Project**  
On February 22 an additional site inspection was conducted and documented substantial improvement in erosion and topsoil managements conditions. Following the January EFSC meeting,

<sup>6</sup> Audio/Video for Agenda Item A=00:02:40 – 2022-02-25-EFSC-Meeting-Audio

the certificate holder, Avangrid, contacted the Department and proposed additional measures as part of its corrective action plan including: offering additional soil enhancements to all affected landowner and tenant farmers; paying for landowner seeding, if certificate holder seeding was not preferred; adding a long-term soil monitoring and evaluation component to the Revegetation Plan; providing to the Department documented completion of reclamation satisfactory to the landowner, and if this documentation cannot be obtained, an executed settlement agreement to compensate for topsoil and crop damage due to failed topsoil management, excess disturbance and erosion impacts. The Department is and will continue to work closely with its consultant, the Oregon Department of Agriculture, and the certificate holder on the corrective action plan components.

*Council Member Condon expressed curiosity as to whether farmers who complained were satisfied with the corrective actions.*

*Ms. Esterson, provided that the Department does not have evidence of full satisfaction with response yet but is maintaining communication with farmers.*

*Council Member Jenkins inquired as to whether there have been any additional complaints since last meeting.*

*Ms. Esterson responded there have not.*

#### Future Meetings

- The next Council meeting is anticipated to be a single day and is scheduled to be held virtually on the 22<sup>nd</sup> of April; a March meeting will not be needed.

#### Council Updates

- Mr. Stenbeck has resigned from the Council and Secretary Cornett is working with Governor's Office to seek a replacement.
- Former Council Member Barry Beyler passed away last week. Mr. Beyler served on the Hanford Clean Up Board for 5 years before being appointed to EFSC, where he served for 9 and a half years serving as Vice Chair for 2 years and Chair for nearly 5 years. Secretary Cornett remembered Mr. Beyler as a selfless volunteer and a moment of silence was observed by Council in his honor.

**B. Obsidian Solar Center (Information Item & Possible Action Item)<sup>7</sup>** – Kellen Tardaewether, Senior Siting Analyst provided an overview of the project, the process to date and the Proposed Order. Jesse Ratcliffe, Senior Assistant Attorney General, counsel to EFSC for the Obsidian Solar Center Contested Case, provided an overview of the issues in the contested case and the findings of facts, conclusions of law and conditions of approval in the Hearing Officer's Proposed Contested Case Order. Mr. Ratcliffe reviewed written requests by parties and limited parties to make non-substantive scrivener error changes to the Proposed Contested Case Order. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

During Ms. Tardaewether's presentation, the following discussion occurred:

*Council Member Condon asked, regarding Recommended Organizational Expertise Condition 1 on the presentation slide, whether the language was intended to allow the applicant to determine when a change in parent company warranted reporting to the Department, noting the use of the word "could": "required*

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<sup>7</sup> Audio for Agenda Item B=00:18:40 – 2022-02-25-EFSC-Meeting-Audio

reporting to the Department as a result of any changes that **could** impact the certificate holder's access to the resources or expertise of the parent companies".

*Ms. Tardaewether reviewed the actual condition language of the proposed order and informed that "could" was not included in the final recommended condition.*

*Council Member Condon noted that the applicant's prior experience appears to only be in the development of smaller facilities and asked how the evaluation of their ability to operate a much larger facility was assessed.*

*Ms. Tardaewether explained that the Department looks at several items including whether the applicant has received any regulatory citations and whether they have completed mitigation for other projects including smaller, local jurisdictional facilities. While there aren't definite examples of completing mitigation projects, the Department points to the substantial mitigation obligations and other Council standards that are required in the site certificate conditions. Their ability to meet those obligations demonstrate that the applicant has the organizational expertise necessary for such a large solar facility.*

*Vice-Chair Howe noted, regarding Council's review of exceptions to Land Use Goals, that the burden of proof to demonstrate that the applicant has met the Council standards is on the applicant. He recalled that over his career in land use, proceedings have become more litigious. He stated "as comprehensive and complex as the application requirements are, it is incumbent upon the applicants to provide complete, thorough, and detailed information, facts, and reasoning to allow the Council to make robust findings of fact and conclusions of law that will withstand challenges." He further stated, "heads up to future applicants, up your game."*

*Council Member Condon questioned the basis for acceptance of the comfort letter provided by Heffernan Insurance to meet the Council's Retirement and Financial Assurance Standard, noting that Heffernan Insurance is not on the Council's pre-approved financial institution list and whether the Department has prior experience with the firm.*

*Ms. Tardaewether explained that the existing rules do not require that comfort letters be provided from firms on the Council's pre-approved list and the rules don't designate criteria that must be met. Once a site certificate is issued, there are specific and mandatory conditions that must be met, and these conditions give the Council the authority to intervene and regulate site retirement activities.*

*Council Member Condon noted the comfort letter from Heffernan refers to the cost of 19 million versus 28 million that is now required for retirement of the facility, and asked if there has been, or will be, an update to the letter.*

*Ms. Tardaewether informed that the Department had not requested or received an updated letter in reference to the 28 million and reminded the Council that the facility cannot begin construction without the 28 million bond.*

*Council Member Condon asked whether the Working Lands Improvement Program Agreements as required by the Habitat Mitigation Plan (HMP), are kept on file by the Department.*

*Ms. Tardaewether and Ms. Esterson confirmed the Department does receive the final executed agreements as a preconstruction element of satisfying the finalization of the Habitat Mitigation Plan.*

*Council Member Chocktoot, concerning Recommended Historic, Cultural and Archaeological Resources Condition 2, provided Council with background on the area detailing its rich history. He explained items found at Fort Rock dating back 9000 years, and that nearby Paisley Cave is one of the oldest areas for DNA evidence of man on the North and South America continent. The dunes were a primary place to bury deceased ancestors for several tribes thus making the area very special and significant place. Tribes work with project proponents and the University of Oregon to do site surveys and to evaluate for cultural resources.*

*Council Member Jenkins expressed concern regarding Recommended Public Services Condition 4, and the applicant's decision to not annex into Christmas Valley Rural Fire Protection District (CVRFPD) or joining the High Desert Rural Fire Protection Association (RFPA) for the protection of the operations and maintenance buildings. He questioned whether other fire protection provisions exist.*

*Ms. Tardaewether explained the fire protection and emergency response plan (Attachment U-3), contains measures regarding fire control equipment required on site and obligates membership in RFPA which includes working in conjunction with other members in the area that fire control equipment could be shared with.*

*Council Member Jenkins explained that his concern is related to the lack of obligation for annexation, which would ensure response from the fire district in the event of a structure fire, and without it, response cannot be guaranteed.*

*Ms. Esterson further explained in the fire protection and emergency response plan, the applicant is obligated to provide evidence of its participation in RFPA or annexation.*

*Vice-Chair Howe suggested that while it may not be plausible to annex such a large area, the applicant could still contract for services for structural fire protection.*

*Council Member Jenkins agreed with Vice-Chair Howe's suggestion and noted that while the applicant may request membership or annexation in the RFPA, approval of the request is not guaranteed. He believed the Council should require the request be made but that the language in the Draft Fire Protection and Emergency Response Plan suggested that the request had to be granted.*

*Council suggested staff review the language related to the Recommended Conditions and Draft Fire Protection and Emergency Response Plan to address these concerns and provide an update prior to Council's final consideration.*

Mr. Ratcliffe presented the Hearing Officer's Proposed Contested Case Order and conducted informal straw polls on the Hearing Officer's Conclusions of Law (HOCL) on the 9 issues of the contested case.

- **Issue 1:** Whether the Application for Site Certificate (ASC) impermissibly includes development within the Fort Rock Planning Area that is more than 600 feet from existing roads in violation of Lake County Zoning Ordinance (LCZO) §24.01(A)(1) and Lake County Comprehensive Plan (LCCP) Goal 2, Policies 10 and 11.
- **HOCL Issue 1:** The limited parties failed to show that the ASC impermissibility includes development within the Fort Rock Planning Area that is more than 600 feet from existing roads in violation of Lake County Zoning Ordinance (LCZO) §24.01(A)(1) and Lake County Comprehensive Plan (LCCP) Goal 2, Policies 10 and 11.

Council did not object to the Hearing Officer's Conclusion of Law on Issue 1.

- **Issue 2:** Whether the ASC failed to demonstrate compliance with the conditional use permit requirements for non-farm use in the A-2 zone as required by Lake County Zoning Ordinance (LCZO) 24.19 because the potential impacts including fugitive dust, invasive weeds, competition for water resources, wildlife displacement, and increased thermal energy (heat blooms) would result in a failure to demonstrate that the proposed facility is compatible with farm uses, consistent with the intent and purposes of ORS 215.243, does not seriously interfere with accepted farming practices on adjacent lands, and does not materially alter the stability of the overall land use pattern of the area.
- **HOCL Issue 2:** The ASC as conditioned in the Department's Proposed Order complies with the conditional use permit requirements for non-farm use in the A-2 zone as required by LCZO §24.19. The limited parties failed to establish the proposed facility, as conditioned, will seriously interfere with accepted farming practices on adjacent lands, or that the facility will materially alter the stability of the overall land use patterns of the area.

*Council Member Jenkins offered his agreement with interpretation of the land use rulings of the Lake County Zoning Ordinance.*

Council did not object to the Hearing Officer's Conclusion of Law on Issue 2.

- **Issue 3:** Whether the ASC failed to demonstrate the proposed development will not unduly diminish agriculture from impacts of fugitive dust, invasive weeds, and wildlife displacement caused by removal of native vegetation, as well as heat blooms caused by the proposed facility, or unduly increase related public service costs in violation of LCZO §24.01(A)(1) and Lake County Comprehensive Plan (LCCP), Goal 2, Policy 17.
- **HOCL Issue 3:** LCCP Goal 2 Policy 17 is implemented through LCZO §24.01 and 24.19. OAH Case No. 2020-ABC-03504 Page 62 of 110 ASC, as conditioned, demonstrates the proposed facility will comply with LCZO §24.01 and 24.19.

*Council Member Condon questioned remedies available to limited parties if there are concerns that compliance are not being met.*

*Mr. Ratcliffe noted that the enforcement provisions in the council statutes and rules allow any member of the public to raise an issue for the Department and EFSC to investigate and respond accordingly. He went on to confirm that, in the event that potential violations involve another agency, EFSC is still the first point of contact.*

Council did not object to the Hearing Officer's Conclusion of Law on Issue 3.

- **Issue 4:** Whether the ASC failed to demonstrate grounds justifying an exception to LCCP Goal 3, identifying a preference for the preservation of agricultural land, as required by the LCCP and ORS 469.504(2).
- **HOCL Issue 4:** The ASC provides sufficient information regarding Applicant's purported bases to allow Council to take an exception to LCCP Goal 3, in accordance with ORS 469.504.

*Council Member Jenkins agreed that the low value of agricultural productivity and lack of irrigation water at the site meets the exception criteria for a Goal 3 exception for this project, however for justification to be*

given, future applicants need to do more. He stressed the goal of the state of Oregon is to protect agricultural lands for agricultural production. "I would encourage applicants to emphasize the concerns for protecting lands more than financial benefits" regarding the importance for additional justification for future projects.

*Chair Grail appreciated Council Member Jenkins and Council Member Howes' suggestions, noting their long careers and backgrounds in Land Management. She urged future applicants and future developers to follow the advice.*

Council did not object to the Hearing Officer's Conclusion of Law on Issue 4.

*Council Member Chocktoot recused himself from Council action for the Obsidian Solar Project due to a potential perceived conflict due to the project proponent entering into an off-project mitigation agreement with the Klamath Tribes, whom Council Member Chocktoot work for. Chair Grail and Mr. Ratcliffe confirmed quorum requirements would not be impacted.*

- **Issue 5:** Whether the proposed project as identified in the ASC diminishes the value of the limited parties' private property and business interests in violation of LCZO §24.01(A)(1) and LCCP Goal 2, Policy 18.
- **HOCL Issue 5:** The limited parties failed to establish that the proposed facility as set forth in the ASC and conditioned in the Department's Proposed Order will result in diminution of value to their private property and/or business interests.

Council did not object to the Hearing Officer's Conclusion of Law on Issue 5.

- **Issue 6:** Whether the ASC failed to demonstrate that the design, construction, and operation of the proposed facility is not likely to result in significant adverse impacts to soil, taking into account Applicant's proposed mitigation, in violation of OAR 345-022-0022.
- **HOCL Issue 6:** The proposed facility as set forth in the ASC and conditioned in this Proposed Order complies with the Council's Soil Protection standard.

Council did not object to the Hearing Officer's Conclusion of Law on Issue 6.

- **Issue 7:** Whether the application proposes development that exceeds the existing capacity of public and private utilities or facilities, including county roads, as well as to provide water needed for the construction of the facility, without Applicant providing funds for the increased services, in violation of LCZO §24.01(A); LCCP Goal 11, Policy 1; and LCCP Goal 13, Policy 14.
- **HOCL Issue 7:** The proposed facility as set forth in the ASC and conditioned in this Proposed Order is not likely to exceed the capacity of public or private utilities, roads, or local emergency services

Council did not object to the Hearing Officer's Conclusion of Law on Issue 7.

- **Issue 8:** Whether the application failed to demonstrate that the proposed development is compatible with existing uses and will not diminish living conditions in violation of LCZO §24.01(A)(1) and LCCP Goal 9, Policy 1.
- **HOCL Issue 8:** The ASC, as conditioned in the Department's Proposed Order, demonstrates the proposed facility will comply with LCZO §24.01, Statewide Planning Goal 9, and LCCP Goal 9 Policy 1.

Council did not object to the Hearing Officer's Conclusion of Law on Issue 8.

- **Issue 9:** Whether the Department's Proposed Order erred by imposing a condition limiting the Applicant to 5,000 gallons of water per well per day rather than limiting the Applicant's water use to a total of 5,000 gallons per day.
- **HOCL Issue 9:** The Department's Proposed Order erroneously permits excessive water use from wells within the project site and should be corrected to limit Applicant's use to no more than 5,000 gallons per day from all wells within the project site.

Council did not object to the Hearing Officer's Conclusion of Law on Issue 9.

Mr. Ratcliffe concluded the review of the Hearing Officer's Proposed Contested Case Order. Requested scrivener corrections submitted by the Applicant and the Department were discussed and accepted to be included in the Proposed Final Order. In addition, Council Member Jenkins provided the following scrivener corrections:

*Page 30 – Paragraph 112. Mr. N. Walls should be Nicholas Johnson*

*Page 62 – Opinion – Statutes instead of Status. Last word is a repeat.*

*Page 84 – Bottom of second full paragraph. ORS reference should be -22 instead of -02.*

*Page 100 – Near bottom – LCCP Goal 9 ..... states instead of sates.*

Prior to opening the Material Change Hearing, Ms. Esterson offered the following changes for consideration to satisfy Council's concerns regarding fire protection services (in red below):

Draft Fire Protection and Emergency Response Plan  
Section 1.0 - Facility Summary and Section 3.0 Fire Prevention Measures

The requirements of this plan are intended to minimize impacts to fire-service providers and ensure fire-response in the event of both structural and non-structural related fires at the facility site. To achieve this outcome, prior to construction of the facility, the certificate holder shall:

- 1) Submit an application for annexation to the Christmas Valley Rural Fire Protection District (CVRFPD) and demonstrate to the Department that the facility has been annexed to be included within CVRFPD's service territory. If the facility is not annexed within CVRFPD's service territory, certificate holder shall execute a contract with CVRFPD for fire-response services at the facility; and,
- 2) Demonstrate enrollment as a lifetime member of the High Desert Rangeland Fire Protection Association (RFPA), a non-profit volunteer association, to provide fire protection and response to the site, see Section 3.0 for more details.

*Council agreed the language was accurately modified and should be included in Attachment U of the Proposed Final Order. Secretary Cornett confirmed that Council did not desire further language modifications.*



The Draft Final Order was presented prior to opening the Material Change Hearing to allow comments from limited parties, the Department, and the applicant.

The Material Change Hearing was opened at 2:15 p.m. and the following comments were offered:

No comments were offered from limited parties or the Department.

- Elaine Albrich, Permitting Counsel for Obsidian Renewables and Obsidian Solar Center:  
Ms. Albrich commented that the applicant, Obsidian Renewables, is satisfied with the Proposed Final Order, and supported the proposed revisions to the Draft Fire Protection and Emergency Response Plan.

Vice-Chair Howe motioned that the Council approve the Proposed Order and the Proposed Contested Case Order with the scrivener corrections and the new language concerning fire protection in section (IV.M Public Services / Fire) as presented on screen as the Final Order and issue a site certificate for the Obsidian Solar Center.

Council Member Jenkins seconded the motion.

*Council Member Jenkins reiterated the need for future applicants to hear EFSC say there needs to be more information provided in order to justify requests for exception from Land Use Goals, especially for Goal 3 exception. Vice-Chair Howe agreed, specifying exceptions need to be robust in their preparation to establish the findings Council needs to give approval.*

Motion carried unanimously.

- C. Public Comment Period (Information Item)<sup>8</sup>** – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

*Secretary Cornett, in response to a question posed in the chat feature of the webinar, stated that Phil Stenbeck's resignation from the Council was due to personal reasons and not related to a conflict of interest.*

There were no public comments offered and the opportunity was closed at 2:35 p.m.

- D. Protected Areas, Scenic Resources and Recreation Standards Rulemaking Project Update (Information Item)<sup>9</sup>** – Christopher M. Clark, Siting Policy Analyst and EFSC Rules Coordinator, provided an update on feedback provided during rulemaking workshops held on this project and staff's preliminary analysis and recommendations for policy issues related to the Protected Areas, Scenic Resources and Recreation Standards. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

<sup>8</sup> Audio/Video for Agenda Item C = 05:10:50 - 2022-2-25-EFSC-Meeting-Audio/Video

<sup>9</sup> Audio/Video for Agenda Item D = 05:15:50 - 2022-2-25-EFSC-Meeting-Audio/Video

*Mr. Clark explained that Susan Geer had provided a comment on this project in writing, and that the comment had been provided to the Council members. Mr. Clark then provided background on the rulemaking project and a summary of the policy issues under consideration, as well as feedback received and staff's recommendations, before addressing the issues individually.*

- **Issue 1:** Rules do not require the department or applicant to give notice to or request comment from the manager of a protected area that may be affected by a proposed facility.

**Staff Recommendation:** Require public notice to be sent to Protected Area Managers. Amend Notice of Intent and Application for Site Certificate rules to require Applicant to identify Protected Area Managers.

*Council Member Condon indicated support for including protected area managers as "reviewing agencies." She stated that she believed the managing agency has the most information regarding the site and project and could provide valuable input on projects. She explained that she did not think a single notice at the Notice of Intent phase would be sufficient to ensure participation in projects that go on for decades.*

*Mr. Clark clarified, that under each alternative, the managing agency would receive notices throughout the process but there were differences between when noticing occurs. He explained that staff had considered a separate alternative that would only require notice at the Notice of Intent phase earlier in the process, but this alternative had been eliminated because, as Council Member Condon suggested, projects do go on for years and personnel changes and project changes make it untenable.*

*Council Member Jenkins indicated support for staff's recommendation. He commented that the notice needs to be specific enough that the manager can respond accordingly. He agreed that protected area managers need to be kept informed through the process.*

*Vice-Chair Howe agreed with Council Members Jenkins and Condon's comments.*

*Council Member Jenkins commented that the proposed rule change that would require an applicant to identify specific contact information may be difficult to implement, and that it may be better to just ensure that notice is directed to the correct organization and place.*

*Mr. Clark acknowledged the challenge in identifying specific individuals, and that some agency representatives had suggested that notice to the agency headquarters or a generic inbox that could be routed to the correct person may be sufficient and that once the Department identified the correct individual within the agency, relationships can be built and maintained. Mr. Clark explained that the draft proposed rule only requires reasonably available contact information, and that staff hoped this achieved a reasonable balance.*

- **Issue 2:** The Scenic Resources and Recreation standards both limit the scope of Council's findings to resources in the analysis area identified in the project order. This is inconsistent with the Protected Area standard, which contains no similar limitation.

**Staff Recommendations:** Amend the Recreation and Scenic Resources Standards to allow the Council to consider evidence related to resources outside the analysis area.

*Council Member Condon expressed support for staff's recommendation.*

*Council Member Jenkins expressed concern with amending the standards to include impacts beyond the analysis area.*

*Mr. Clark explained that the applicant would still not be required to provide evidence for anything outside of the analysis area, and the Council would still only be weighing the evidence in the record. He explained that the difference would be that if a member of the public provided evidence of an impact to a resource outside of the analysis area, the Council could consider that evidence.*

- **Issue:** Some stakeholders recommend that the study areas for impacts to Protected Areas, Recreation, and Scenic Resources are too large, especially for renewable energy facilities.

**Staff Recommendation:** Make no changes.

*Several Council Members expressed support for staff's recommendation.*

- **Issue:** A stakeholder recommended that the Council limit study areas for impacts to Protected Areas, Recreation, and Scenic Resources to areas within the borders of Oregon.

**Staff Recommendation:** Make no changes

*There were no questions or discussion from the Council.*

- **Issue 3:** The Protected Areas standard refers to “designations in effect as of May 11, 2007.” A number of new areas have been designated for protection since that time.

**Staff Recommendations:** Remove the effective date for designations, allowing the Council to consider impacts to protected areas that are established during the review of a proposed facility.

*Council Member Condon stated that she supported setting reasonable goal posts for applications but would have concerns about the Council lacking the ability to consider new designations in the review of amendment requests.*

*Mr. Clark clarified if there is a request for amendment, especially a request involving the extension of timelines, the applicant is required to look at changes in facts or law since the original approval, including the designation of new protected areas.*

*Council Member Jenkins stated that he felt it was important to set clear goalposts for applicants, and that as a matter of fairness once an application is submitted the Applicant should not be required to evaluate any newly designated areas.*

*Council Member Jenkins recommended that, rather than pursuing staff's recommendation, the Council should pursue the alternative to establish a clear threshold for protected area designations near the beginning of the review process. Vice-Chair Howe agreed.*

*Secretary Cornett clarified that Issues 3 and 8 both related to applicability and effective dates and explained the difference in the scope of the two issues.*

*Council Members Jenkins and Vice-Chair Howe agreed that a goal post rule should apply to both issues.*

*Mr. Clark confirmed that he would revise the draft proposed rules based on the Council's feedback.*

**Issue 4:** The Protected Areas standard contains a list of designation categories and specific protected areas that may be incomplete or out of date.

**Staff Recommendations:** Update and simplify the list and remove specific examples to reduce the need for future rulemaking.

*Council Member Condon asked how the Department addresses county designated protected areas.*

*Mr. Clark responded that a local protected area could be protected under the Scenic Resources or Recreation Standards if it was designated by a local government and included in the Goal 5 resource inventory of its comprehensive plan, but that the Protected Areas Standard itself only covers areas designated by the state or federal governments.*

*Several Council Members expressed support for staff's recommendation.*

- **Issue 5:** The Protected Areas Standard does not list Outstanding Resource Waters as Protected Areas.

**Staff Recommendations:** Make no changes

*Vice Chair Howe, and Council Members Jenkins and Condon agreed with staff's recommendation.*

**Issue 6:** The current rule may permit a transmission line or natural gas pipeline to be sited in a protected area when other lesser impact alternatives are available.

**Staff Recommendations:** Amend rule to clarify that the Council may approve a transmission line or natural gas pipeline to be sited in a protected area when reasonable alternative routes or sites that would avoid the protected area have been studied and that the proposed route is likely to result in fewer adverse impacts to resources or interests protected by Council standards.

*Vice-Chair Howe agreed with staff's recommendation.*

*Council Member Jenkins expressed concern over the difficulty of balancing different resources against one another, and that additional work may be needed to clarify how the revised language would be applied, but thought the proposed change was a good start.*

**Issue 7:** The Scenic Resources standard does not specify that resources and values identified as significant or important in state land management plans are protected.

**Staff Recommendations:** Amend standard to require assessment of visual impacts to State Scenic Resources.

*Council Member Condon asked Mr. Clark to explain the difference between “scenic values” and “scenic resources.”*

*Mr. Clark explained that he believed the terms to be synonymous but noted there may be separate distinct definitions.*

*Council Member Chocktoot explained that there are many views or location with spiritual significance to tribes and that scenic values could refer to a practitioner’s ability to experience those views.*

*Council Member Truitt added his view that the area would have intrinsic or inherent value; value that is held by groups, the public, and tribes, and built into the history of the group and its resources.*

*Secretary Cornett responded while the scenic resources are the “what”, and the “scenic values” describe “how” they should be protected, based on designated management plans which describe what those values are.*

*Vice-Chair Howe, Council Member Condon, and Council Member Jenkins supported staff’s recommendation.*

**Issue 8:** The application of new rules or standards to an application for Site Certificate that is under review on or before the effective date of the rules could prejudice the applicant.

**Staff recommendations:** Specify that amended standards will only apply to applications or requests for amendment filed on or after the effective date of the rules.

*Council Member Howe expressed support for staff’s recommendation.*

*Council Member Condon asked what the average length between submitting the application for site certificate and beginning of construction. She expressed concern about the process for addressing rule changes affecting the project when an amendment is required before the beginning of construction.*

*Secretary Cornett offered that he could provide detail on the average approval and construction times for renewable projects in the coming weeks. He went on to explain that there are deadlines to begin and complete construction or to submit an amendment request to change those deadlines, and that an amendment to change those deadlines would require review of any rules adopted by Council since the project was originally approved.*

*Council Members thanked staff for the clarification and expressed support for staff’s recommendation.*

**Issue 9:** More specificity may be needed in how the Council evaluates visual impacts.

**Staff Recommendations:** Consider in future rulemaking meetings due to the complexity of this issue.

*Council Members unanimously agreed that a separate rulemaking project is needed to assess the methodology used for visual impacts assessments and other issues regarding scenic resources.*

**Issue 10:** A stakeholder recommended the Council clarify the criteria for identifying important recreational opportunities.

**Staff Recommendations:** Make no changes at this time.

*Council Members unanimously agreed no changes to the Recreation Standard were needed at this time.*

*Mr. Clark indicated staff would update the draft proposed rules and provide stakeholders with an additional opportunity for informal comments. Council confirmed their support of an informal comment period.*

- E. Public Comments Web Portal Update (Information Item)**<sup>10</sup> Wally Adams, Operations and Policy Analyst will present and show a demo of the new web portal for submitting and viewing public comments on projects under the Council's jurisdiction.

This presentation was deferred to the next EFSC meeting.

### **Adjournment**

Chair Grail adjourned the meeting at 4:24 p.m.

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<sup>10</sup> Audio/Video for Agenda Item E=07:00:13– 2022-02-25-EFSC-Meeting-Audio