



Oregon

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MEMORANDUM

To: Oregon Energy Facility Siting Council
From: Todd R. Cornett, Assistant Director/Council Secretary
Date: February 8, 2019
Re: Agenda Item G (Information Item) – Possible Amendment Determination Request Notification for the February 22, 2019 Council Meeting

1. Amendment Determination Requests:

Under the amendment rules Site certificate holders have the opportunity to request two types of determinations prior to submitting an amendment request. The first is whether an amendment is even required. There are three provisions that need to be evaluated to determine whether a proposed change requires and amendment:

- (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 a Council standard;
- (b) Could impair the certificate holder’s ability to comply with a site certificate condition; or
- (c) Could require a new condition or a change to a condition in the site certificate.

The second is if an amendment is required, what review process is justified. Type A, the default process allows more time and procedural steps than Type B. The differences are described in the table below:

Review Phase/Step	Timeline	
	Type A	Type B
ODOE Issues Determination of Completeness on Preliminary Request for Amendment	Within 60 days	Within 21 days
ODOE Issues Draft Proposed Order	Within 120 days of notice of Determination of Completeness	Within 60 days of notice of Determination of Completeness

Review Phase/Step	Timeline	
	Type A	Type B
Public Hearing	At least 20 days after issuance of Draft proposed order	Not applicable
ODOE Issues Proposed Order	Within 30 days following the Public Hearing	Within 21 days of close of comment period on Draft Proposed Order
Deadline for Contested Case Requests	At least 30 days after issuance of Proposed Order	Not applicable
ODOE Review and Council Decision on Contested Case (CC) Requests	Next regularly scheduled Council meeting following deadline for CC requests	Not applicable
Contested Case Proceeding	At Council's discretion (no specific timeline)	Not applicable
Issuance of Final Order and Amended Site Certificate	Next regularly scheduled Council meeting following deadline for CC requests	Next regularly scheduled Council meeting following issuance of PO

In determining whether the Type B review process is justified, the Department considers the following specific factors but can evaluate others as well.

- (a) The complexity of the proposed change;
- (b) The anticipated level of public interest in the proposed change;
- (c) The anticipated level of interest by reviewing agencies;
- (d) The likelihood of significant adverse impact; and
- (e) The type and amount of mitigation, if any.

2. Existing Notification Requirements:

OAR 345-027-0057 – Amendment Determination Request

Related to both categories of amendment determination requests after they have been submitted to the Department:

(5) *After receiving an amendment determination request, the Department shall post an announcement on the Department's website to notify the public that an amendment determination request has been received (emphasis added). The announcement shall include a copy of the amendment determination request.*

Related to Department requirements on requests of whether or not an amendment is required:

(6) ***** After the Department issues its written determination, the Department shall, as promptly as possible, provide the request and the written determination to the Council and post the written determination to its website. At the first Council meeting after the Department issues its written determination, the Department shall provide verbal notice of the request and the written determination to the Council during the consent calendar agenda item (emphasis added).*****

- 3. Current Additional Amendment Determination Notifications Beyond Rules Requirement:**
Type A/B determinations are not required to adhere to subsection (6) above which includes posting the determination on the project website and providing an update to Council at their next meeting. However, in practice the Department has followed these procedures for Type A/B determinations.

Additionally, Department staff currently issues a monthly overview of all Siting Division activities called the “Monthly Siting Report.” This is sent out through Gov Delivery and anyone is able to sign up to receive this through email. The report includes a section on amendment determination requests.

- 4. Ms. Gilbert’s request:**
During the November, 16 2018 Council meeting, Ms. Irene Gilbert requested she be provided a specific notice by the Department of all final determinations related to amendment determination requests. Her stated purpose was that a specific notice to her was required in order to be able to challenge a determination in Circuit Court.

Following Ms. Gilbert’s request, Council directed staff and DOJ to evaluate whether the Department is required to provide public notice when it makes a determination on a Type A vs Type B amendment review, beyond its current practice of posting that determination to the website. Please note, on January 25, 2019 the Friends of the Columbia River Gorge and Oregon Wild challenged the Department’s determination that Type B amendment review was justified for the Summit Ridge time extension request in Multnomah County Circuit Court. No specific notice was provided to the Friends of The Columbia River Gorge and Oregon Wild beyond what is described above.

- 5. Options:**
After reviewing applicable statutes and rules it was determined that Council is not required to establish additional notice of the final determinations of amendment determination requests but may do so if they choose.

Option 1: Do not create any additional notification requirements.

Option 2: Direct staff to establish a specific brief email notice on all final determinations of amendment determination requests through Gov Delivery. Anyone interested in receiving these notices would have to register to receive these notices through Gov Delivery.

The Council may consider other options not proposed by staff.