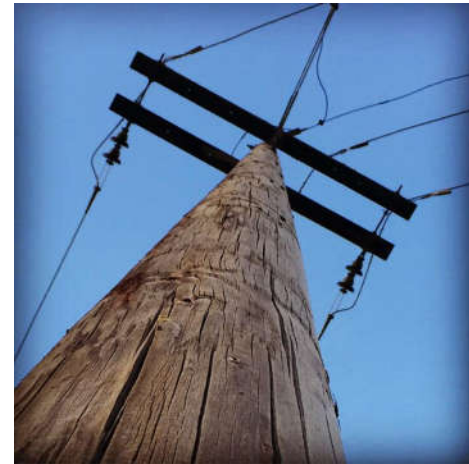


Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Columbia Gorge
Discovery Center
5000 Discover Drive
The Dalles, OR

February 22, 2019



Opening Items:

- Call to Order
- Roll Call
- Announcements

Announcements:

- For those attending in person:
 - Comment Registration Cards are available on the table.
 - GovDelivery Sign Up Cards to receive project information by email are also on the table
- Those participating via the AT&T phone line, please mute your phone and if you receive a phone call, please hang up from this call and dial back in after finishing your other call



Announcements continued:

- If you would like to address the Council, please do not use the speaker phone feature, because it will create feedback
- For those signed onto the webinar, please do not broadcast your webcam
- Please silence your cell phones
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.



Agenda Item A

- Council Secretary Report



Agenda Item B (Action Item)

Stateline Wind Project, Request for Amendment 5

**Certificate Holder Referral to Council of Department's
Type A Amendment Review Determination
(Action Item)**

February 22, 2019

Patrick Rowe, Oregon Department of Justice



Overview

- Amendment request: repower 43 existing wind turbines; re-disturb temporary access roads and laydown areas; amend conditions
- Type B review amendment determination request
- Department determined Type A review be maintained
- Referral of Department's Type A review determination to Council
- Council may concur, modify, or reject Department's determination

Schedule/Format

1. Amendment process overview (this presentation)
2. Certificate holder presentation of its position
3. ODOE presentation of its determination
4. Public comment opportunity
5. Certificate holder response opportunity
6. Council deliberation and decision (concur, modify or reject)

Site Certificate Amendment Process

History: “Old” Amendment Process Rules

- One process for majority of amendments
- Two variations of schedule: standard was 60 days from receipt of amendment request to proposed order; ODOE option to determine extended review, in which case 180 days to release proposed order
- Both the expedited and extended review process included contested case opportunity

Site Certificate Amendment Process

Amendment Rulemaking 2017

- Initial proposal: One process for all amendments
- At request of developers and Council, inclusion of “Type B” opportunity

Site Certificate Amendment Process

Review Phase/Step	Timeline	
	Type A	Type B
ODOE notifies whether Preliminary Request for Amendment is complete	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
Public Written Comment	At least 20 days after issuance of Draft proposed order	At least 20 days after issuance of Draft proposed order
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



Site Certificate Amendment Process

Review Phase/Step	Timeline	
	Type A	Type B
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

Site Certificate Amendment Process: Important Considerations

- The standards are the same for all reviews
- The review timelines are maximums and ODOE can, and does, issue documents ahead of timelines
- By rule, ODOE can extend the timelines at its discretion to release a DPO

Site Certificate Amendment Process

Current Process Pathways based on 2017 Amendment Rulemaking

- No defined categories of amendments that are Type A or Type B
- **Type A is default**
- Type B:
 - Must be requested and justified by certificate holder (next slide)
 - Does not include public hearing on DPO in front of Council
 - Does not allow opportunity for person to request contested case
 - Can seek judicial review if made written comments
 - Shorter maximum timelines at certain process steps compared to Type A
- Type C:
 - Only during construction and not at issue here



Type B Factors OAR 345-027-0057(8)

Rule includes list of five factors to consider for Type B request, “including but not limited to:”

1. The complexity of the proposed change;
2. The anticipated level of public interest in the proposed change;
3. The anticipated level of interest by reviewing agencies;
4. The likelihood of significant adverse impact; and
5. The type and amount of mitigation, if any.

Certificate Holder's Presentation
Stateline Wind Project, Request for Amendment 5
Type A Amendment Review Request





Stateline Wind Project Request for Amendment 5

Council Review of Amendment Type

February 22, 2019

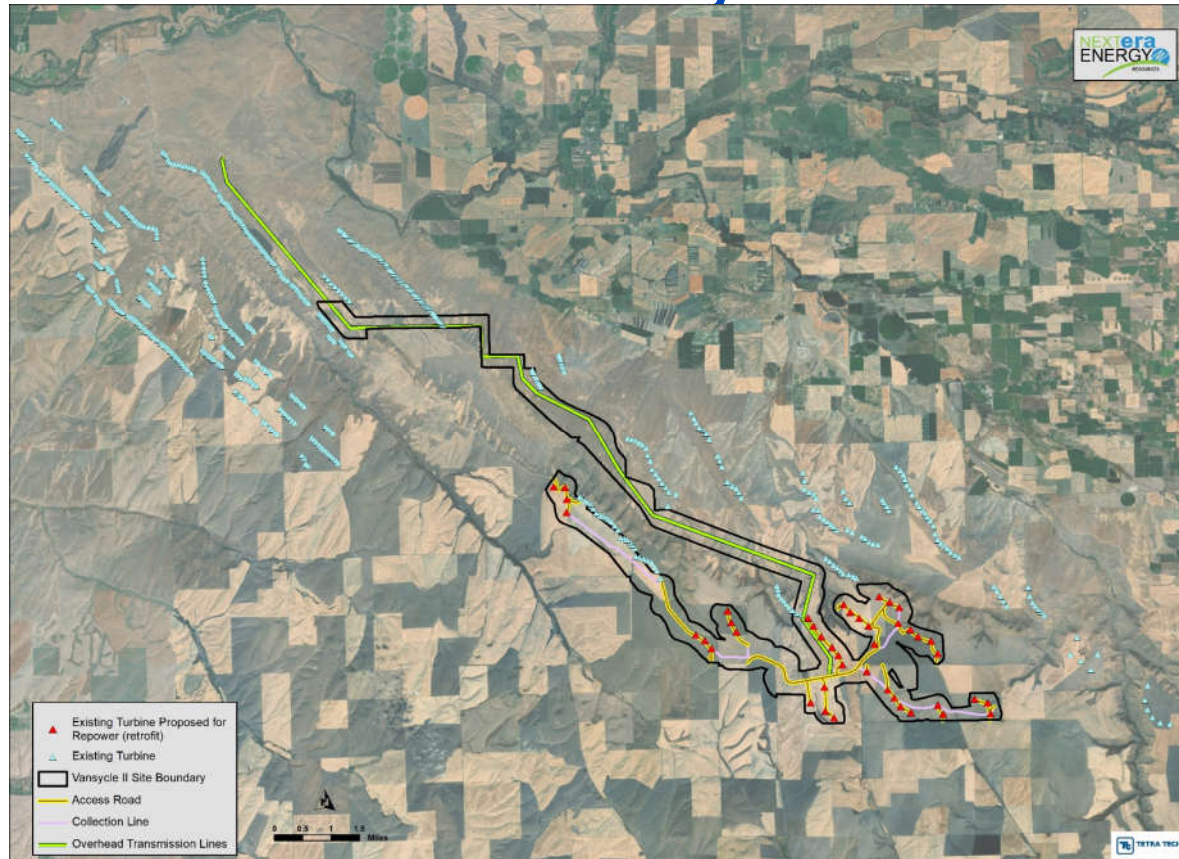
Council Review of Amendment Type --- Stateline RFA 5

Background

- **NEER is an experienced developer and operator, producing approximately 19,882 MW from 175 facilities in 29 states and Canada.**
- **NEER has operated the Stateline Wind Project since 2001:**
 - Stateline 1 and 2 wind energy facilities: 186 turbines, with a total peak generating capacity of 123 MW
 - Stateline 3 Wind Energy Facility: 43 turbines with a total peak generating capacity of 99 MW (operational since 2009)
- **RFA 5 is for Stateline 3 (Vansycle II) only – an existing operational facility**

Council Review of Amendment Type --- Stateline RFA 5

Stateline III/Vansycle II



Council Review of Amendment Type --- Stateline RFA 5

Stateline Wind Project – Stateline 3/Vansycle II



Council Review of Amendment Type --- Stateline RFA 5

RFA 5 Purpose & Request

The primary purpose of RFA 5 is to allow operating turbines to be upgraded to current technology by:

1. Replacing the turbine blades and nacelles on the existing turbines, increasing the maximum blade tip height from 416 to 440 feet (24-foot increase); and
2. Redeveloping previously *approved* temporary access roads and laydown areas in order to deliver the new turbine parts, remove the old turbine parts, and stage the parts during construction.

Note, there will be no change to the Facility's footprint.

Council Review of Amendment Type --- Stateline RFA 5

Review Type Determination by the Department

The Department determines Type A review is appropriate for the following reasons:

- Proposed modifications could be considered complex;
- Anticipated interest from public and reviewing agencies; and
- Proposed modifications would result in change in the type/amount of mitigation.

Council Review of Amendment Type --- Stateline RFA 5

Proposed Modifications Are Not Complex

- In the January 9, 2019 review path determination, the Department notes that it considers the proposed change “complex” because “wind turbine repowering has not been previously reviewed or approved by Council for any EFSC-jurisdictional facility.”
- Proposed repowering effort is a “retrofit” type of repower, not a “redevelopment” of the entire facility. All activities will occur within the original disturbed acreage, and the facility’s footprint will remain unchanged.

Council Review of Amendment Type --- Stateline RFA 5

The Technology is Not New or Novel

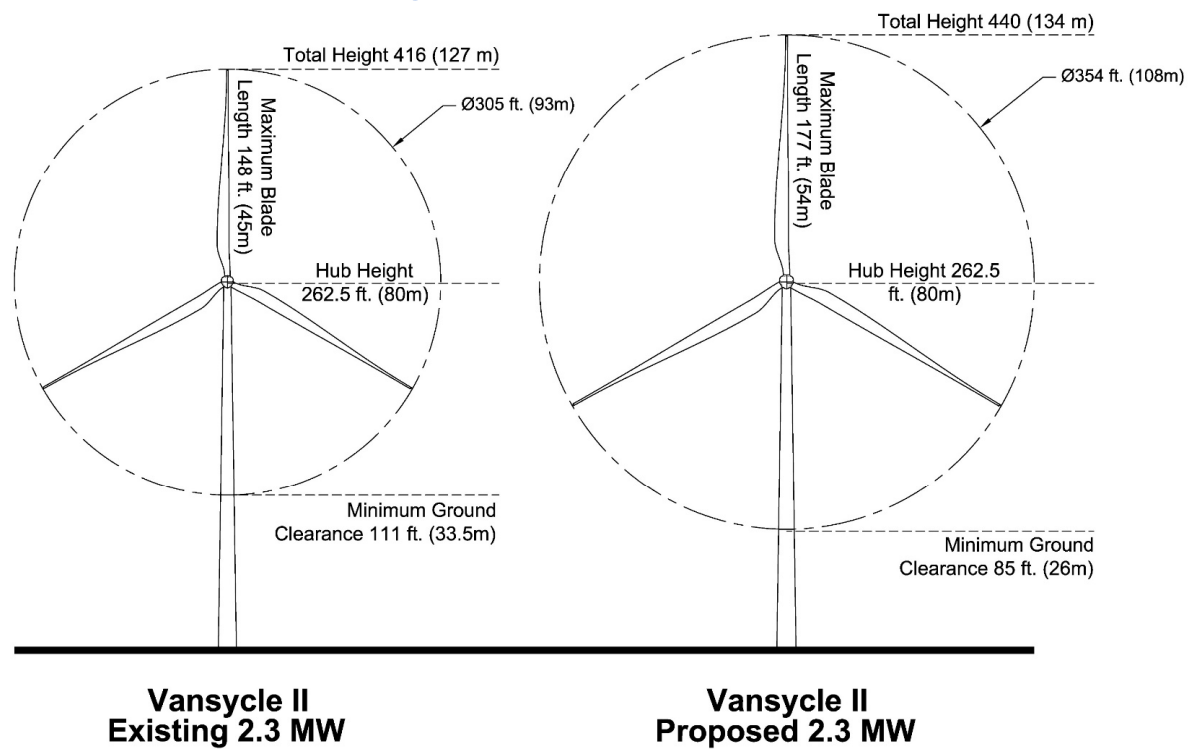
- The modified turbines for Stateline 3/Vansycle II do not present turbine dimensions that EFSC has not already reviewed and approved for other facilities, including existing operational facilities.
- There are operational wind farms in Oregon with turbine heights of 492 feet (Shepherds Flat and Leaning Juniper).

Approved Turbine Dimensions (not operational):

Specification	Wheatridge	Golden Hills	Summit Ridge	Montague
Individual Turbine Generating Capacity (MW)	2.5	1.0-3.2	2.7	3.0
Maximum Blade Length in feet	204	207	200	164
Hub Height in feet	291	404	299	328
Rotor Diameter (Rotor Swept Height) in feet	417	495	400	328
Total Height (tower height plus blade length) in feet	500	650	499	492 (597 proposed)
Minimum Ground Clearance in feet	83	46	59	66

Council Review of Amendment Type --- Stateline RFA 5

Stateline 3/Vansycle II – Turbine Comparison



Council Review of Amendment Type --- Stateline RFA 5

Type B Review is Appropriate

Insufficient Public and Agency Interest to Warrant Type A Review:

- It may be true that there is “general public interest” in the height of wind turbines at new facilities, but the certificate holder does not anticipate the same level of interest in the proposed retrofits.
- There were only seven public (non-agency) comments on the amendments related to Stateline 3 (RFAs 2 through 5).
- Comments from a handful of reviewing agencies are required as part of the amendment process and should not be considered agency interest for the purposes of determining Type A review.

Council Review of Amendment Type --- Stateline RFA 5

Type B Review is Appropriate

- It is unclear how new/amended conditions result in a “change in the type and amount of mitigation.”
- In any event, it is unclear how imposition of standard compliance conditions warrant the need for Type A review.

Council Review of Amendment Type --- Stateline RFA 5

Conclusion

- **The repowered turbines will be operated in the same manner as existing and as previously approved by EFSC.**
- **The changes proposed in RFA 5 are the types of technological changes that the Type B process was designed to address.**
- **If these changes cannot be processed as Type B, then it is difficult to imagine what types of changes will qualify.**
- **We respectfully request that EFSC reconsider the determination by the Department that RFA 5 should be subject to the Type A review process and instead conclude that the Type B process is the appropriate review path.**

Stateline Wind Project, Request for Amendment 5:

Department's Type A Amendment Review Process Determination



Department's Evaluation of Factors

Complexity of proposed change (OAR 345-027-0057(8)(a))

- Wind turbine retrofit is complex, new for facility and Council
- Technical review of turbine foundations and structures by DOGAMI

Department's Evaluation of Factors

Anticipated level of public interest in proposed change
(OAR 345-027-0057(8)(b))

- Level of interest anticipated for wind turbine retrofit due to new type of proposed change
 - Historic level of interest in facility and similar facilities
- Most recent amendment review in 2009

Department's Evaluation of Factors

Anticipated level of reviewing agency interest in proposed change
(OAR 345-027-0057(8)(c))

- Level of interest anticipated due to new type of proposed change
- Comments received from multiple agencies (including DOGAMI, as mentioned above)

Department's Evaluation of Factors

Likelihood of Significant Adverse Impact (OAR 345-027-0057(8)(d))

- Based on Department and agency review, the likelihood of significant adverse impacts is considered low.
- Not a factor in the determination.

Department's Evaluation of Factors

Type and Amount of Mitigation (OAR 345-027-0057(8)(e))

- The Department determined that a change in the type and amount of mitigation, in the form of new and amended conditions, is necessary recommend approval of the amendment request.

Department's Type A Determination

Table 1: Type A Review – Factor Assessment

OAR 345-027-0057(8) Factors	Wind Turbine Retrofit
(a) The complexity of the proposed change	X
(b) The anticipated level of public interest in the proposed change	X
(c) The anticipated level of interest by reviewing agencies	X
(d) The likelihood of significant adverse impact	
(e) The type and amount of mitigation, if any	X

Council's Scope of Review

- After the following:
 - Public comments
 - Certificate holder response
- Council shall deliberate and:
 - Concur, modify or reject Department's Type A review determination

Stateline Wind Project RFA5 Type A Review Referral Request

Public Comment Opportunity



Stateline Wind Project RFA5 Type A Review Referral Request

Certificate Holder Response Opportunity



Stateline Wind Project RFA5 Type A Review Referral Request

Council Deliberation



Break



Agenda Item C (Information Item)

Summit Ridge Wind Farm: Public Hearing on the Draft Proposed Order on Request for Amendment 4

February 22, 2019

[10:00 AM]

Presented by:
Luke May, Siting Analyst



Presentation Overview

- Brief summary of the facility and process
- Open the public hearing for verbal comments. Comment registration cards are available and must be completed.
- Written comments can also be submitted until close of hearing.



Public Hearing Process

- Council Chair Opens Hearing
- Certificate Holder Comment (optional)
- Members of the Public Comment Opportunity
- Certificate Holder Rebuttal (optional)
- Council Chair Closes Hearing

*The Council may set time limits for comments.



Facility Overview

Certificate Holder:	Summit Ridge Wind, LLC
Certificate Holder Parent Company:	Pattern Renewables 2 LP; Subsidiary of Pattern Energy Group 2 LP
Type of Facility (Approved, not yet constructed):	72 wind turbines (which would generate approximately 194.4 MW)
Related or Supporting Facilities:	<ul style="list-style-type: none">- collector substation- O&M building- meteorological towers- power collection system- transmission lines- SCADA- access roads and crane paths



Facility Site/Site Boundary Location 1 of 2

Site Boundary

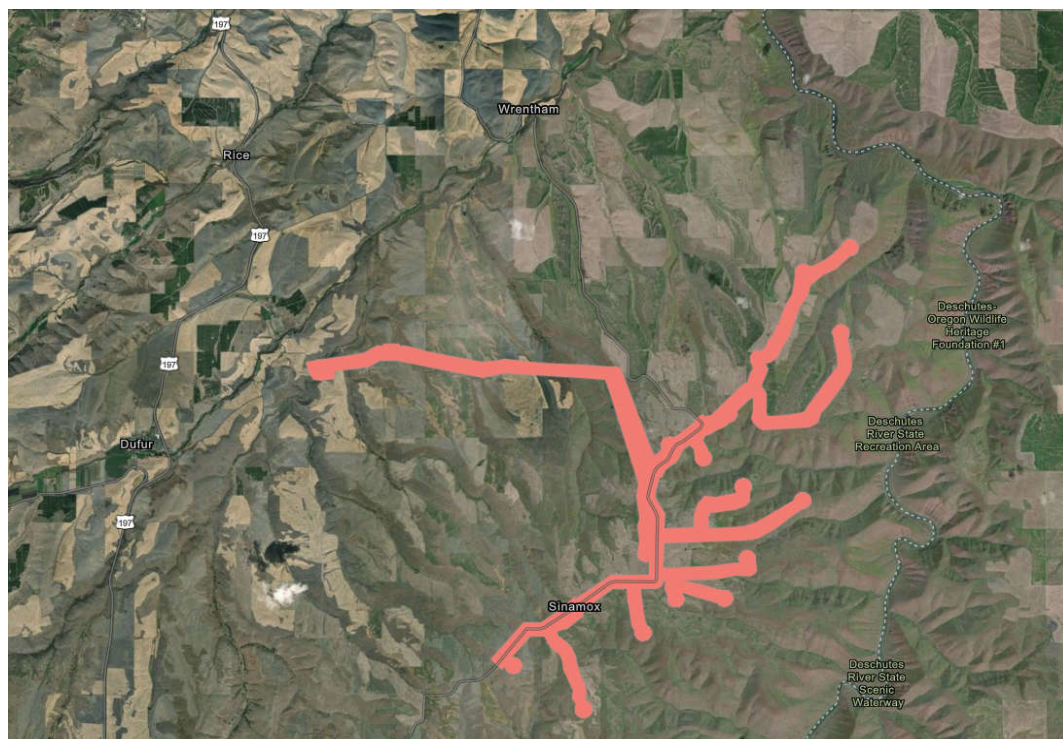
- Contains approximately 11,000 acres
- Private land, within Wasco County

Site Certificate History

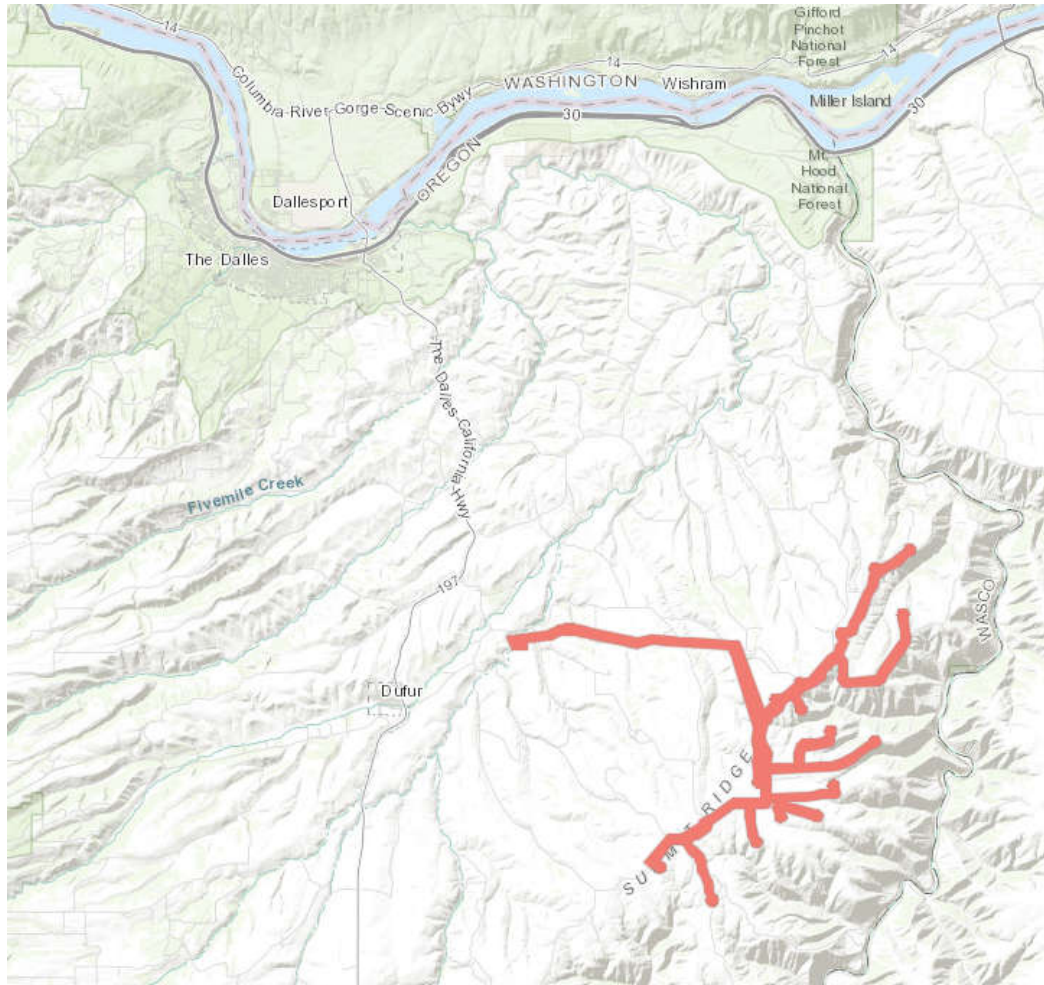
- Site Certificate effective August 19, 2011

Site Certificate Amended three Times:

- August 2015
- November 2016
- December 2017



Facility Site/Site Boundary Location 2 of 2



RFA4 – Requested Modifications

- Requests that the construction deadlines be extended by two years.*
- Requests that the construction commencement deadline be extended to August 19, 2020 and;
- Requests that the construction completion deadline be extended to August 19, 2023.

Condition Changes

- Condition 4.1
 - Condition 4.2
-
- *Note that the current site certificate requires construction to begin by August 19, 2018 and be completed by August 19, 2021. The receipt of the RFA4 stayed these construction deadlines.

RFA4 Procedural History

Requirement	Responsible Party	Date
Preliminary Request for Amendment 4	Certificate Holder	August 17, 2018
Type B Review Evaluation and Response	ODOE	August 23, 2018
Type B Review Supplementary Materials	Certificate Holder	September 5, 2018
Type B Re-Review and Determination	ODOE	November 28, 2018
Complete RFA4 Received	Certificate Holder	January 14, 2019
Draft Proposed Order Issued (Type B)	ODOE	January 16, 2019
Draft Proposed Order Re-Issued (Type A)	ODOE	February 1, 2019
Comment Period (37-days)	ODOE	January 16 – February 22, 2019
Public Hearing (Today)	EFSC	February 22, 2019
Council Review of Draft Proposed Order	EFSC	TBD
Proposed Order/Public Notice and Notice of Contested Case Issued	ODOE	TBD
Contested Case Proceeding	EFSC	TBD
Final Order/Amended Site Certificate	EFSC	TBD

Public Hearing on Summit Ridge Wind Farm Request for Amendment 4



Public Comments

OAR 345-027-0067(C) – (F)

- Issues must be raised in person or in writing before the close of the record of the public hearing*
- Failure to raise an issue on the record of the public hearing precludes the Council from considering whether to grant a contested case on that issue*
- Failure to raise an issue with sufficient specificity to allow the Council the Department and the certificate holder an opportunity to respond also precludes the Council from considering whether to grant a contested case on that issue*

Consideration of issues in a contested case

OAR 345-027-0071(7):

To determine that an issue justifies a contested case proceeding under section (8), the Council must find that the request raises: a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets an applicable standard.

Agenda Item D (Information Item)

Summit Ridge Wind Farm: Presentation on Draft Proposed Order on Request for Amendment 4

February 22, 2019

Presented by:
Luke May, Siting Analyst



Council's Scope of Review

For an amendment to extend construction deadline(s), the Council must consider:

- “how many extensions it has previously granted”;
- Whether there has been any change of circumstances that effects a previous Council finding; and,
- Whether the facility complies with all Council standards
- [OAR 345-027-0085; OAR 345-027-0075]

Note that 345-027-0085(5) provides that, for facilities approved prior to October of 2017, subsections (3) and (4) of OAR 345-027-0085 do not apply.

- Subsection (3) states that the Council must specify new construction deadlines that are the later of (a) three years from the deadlines previously in effect or; (b) two years, following a contested case, after an amendment is approved.
- Subsection (4) states that the Council may not grant more than 2 amendments to extend the deadline to begin construction.

Since Summit Ridge was originally approved prior to October of 2017, the Council is not limited in its authority to only grant two construction deadline extensions, and is bound by the time constraints provided by subsection (5),* not subsection (3).

*Subsection (5)(d) provides that construction deadlines may not exceed two years from the deadlines previously in effect.

Council's Scope of Review

For an amendment not described in OAR 345-027-0075 [extend construction deadline(s)], the Council shall consider whether the amendment would affect any findings made by the Council in an earlier order.

For all amendments, the Council shall consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

[OAR 345-027-0070]

Council's Scope of Review

Pursuant to OAR 345-027-0071, Council shall:

- Review Draft Proposed Order
- Evaluate compliance with applicable standards, laws that could be impacted by change
- Consider all comments received
- Provide comments to staff for consideration in the Proposed Order



Comments on RFA4

Reviewing Agency and Tribal Government Comments

- Oregon Department of Fish and Wildlife
- Oregon State Historic Preservation Office
- Oregon Department of Geology and Mineral Industries
- Wasco County Board of County Commissioners (SAG)
- Wasco County Planning Department
- Confederated Tribes of the Warm Springs Reservation of Oregon



Review of Draft Proposed Order

No substantive changes in previous Council Findings:

- Soil Protection
- Protected Areas
- Threatened and Endangered Species
- Scenic Resources
- Historic, Cultural and Archeological Resources
- Recreation
- Public Services
- Waste Minimization
- Cumulative Effects Standard for Wind Energy Facilities
- Removal-Fill Law
- Water Rights



Review of Draft Proposed Order

General Standard of Review [OAR 345-022-0000]

- Recommends condition amendments to allow the certificate holder until August 19, 2020 to begin construction of the facility, and to allow the certificate holder until August 19, 2023 to complete construction of the facility.
- Recommends changes to the site certificate to remove reference to total megawatts that may be generated by the facility.
- Recommends administrative changes to clarify size of the transmission line micrositing corridor.

Review of Draft Proposed Order

Organizational Expertise [OAR 345-022-0010]

- Updated findings relating to the certificate holder's absence of regulatory citations.
- Updated findings relating to the certificate holder's ability to design, construct, and operate the proposed facility in a manner that protects public health and safety.

Review of Draft Proposed Order

Structural Standards [OAR 345-022-0020]

- Recommends administrative updates to site certificate conditions based on rule updates to mandatory conditions contained within OAR Chapter 345 Division 25.
- Recommends administrative changes to require the certificate holder to submit its geotechnical report to the Department at least 90 days prior to beginning construction, and for the geotechnical report to include investigations at all turbine locations, transmission line dead-end and turning structures, substation(s), and at the operations and maintenance building.
- Updated findings relating to “Disaster Resilience and Climate Change Adaptation,” based on rule updates to Chapter 345 Division 21.

Review of Draft Proposed Order

Land Use [OAR 345-022-0030]

- Updated findings relating to the facility's ability to comply with ORS 215.274 (associated transmission lines located within an exclusive farm use zone area), which was not evaluated in prior Final Orders.
- Updated findings that confirm previous Council review, approving the reasoning to allow for turbine setbacks, as evaluated under WCLUDO Section 19.030(D)(1)(c).

Review of Draft Proposed Order

Retirement and Financial Assurance [OAR 345-022-0050]

- Updated findings relating to the total estimated cost of facility decommissioning. The cost of decommissioning should be increased from \$6.95 million to \$12.019 million.
- Updated financial decommissioning estimate based on discrete facility unit retirement costs.

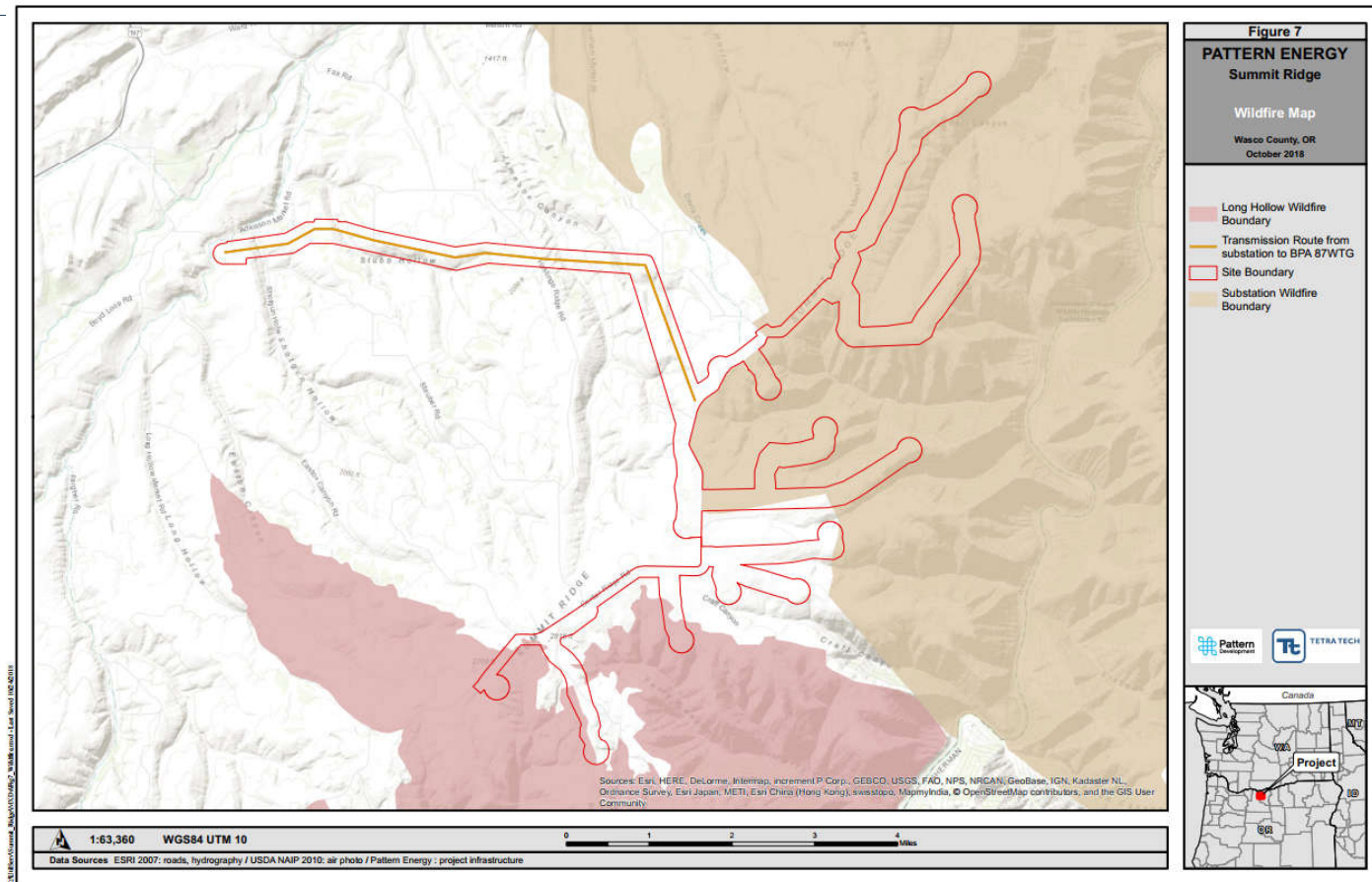
Review of Draft Proposed Order

Fish and Wildlife Habitat [OAR 345-022-0060]

- Recommends an administrative clarification that pre-construction plant and wildlife surveys be conducted within 400 feet of all areas that would be disturbed during construction within the site boundary.
- Recommends that an updated habitat assessment of mitigation sites be prepared, because of wildfires that have occurred since issuance of the last site certificate. The habitat assessment must occur prior to construction.
- Recommends an amendment to a condition to allow for the certificate holder to engage in construction activities between December 1 and April 15, if the certificate holder is able to demonstrate that it would avoid, minimize, or mitigate impacts to big game and big game habitat.

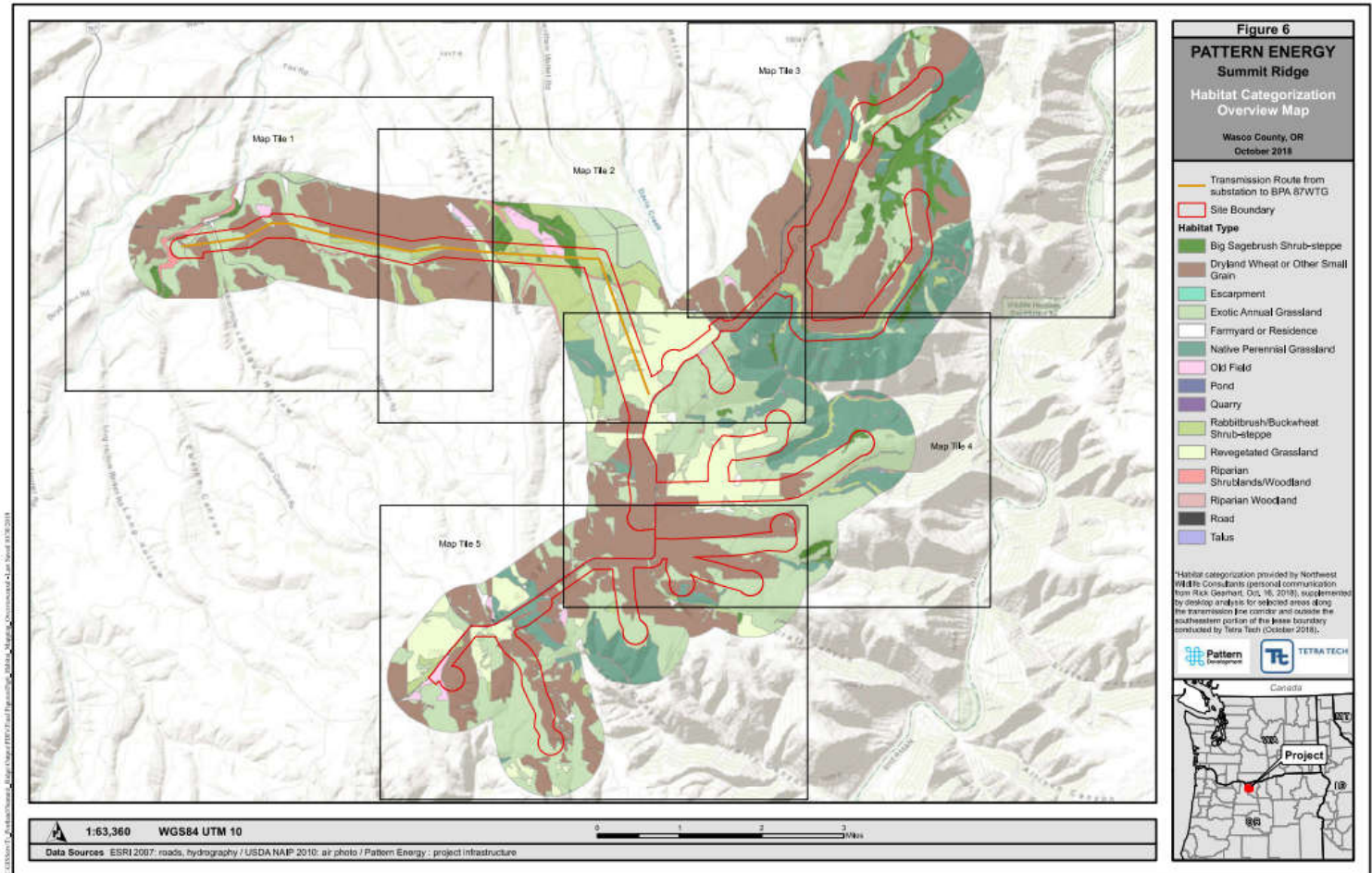
Review of Draft Proposed Order

Wildfire Burn Area



Review of Draft Proposed Order

Previous Habitat
Categorization



Review of Draft Proposed Order

Public Health and Safety Standards for Wind Energy Facilities [OAR 345-024-0010]

- Recommends that the certificate holder include, within its compliance plan, the process or protocol to be implemented that ensure the manufacturer's handling instructions and procedures are followed during equipment delivery.
- Recommends a requirement that the certificate holder submit, for approval by the Department, an operational safety monitoring program. The program must include protocols relating to the monitoring and inspection of turbine blade and turbine tower components.
- Must report any blade or tower failure events to the Department within 72 hours of occurrence, and must also submit a root-cause analysis for compliance evaluation.

Review of Draft Proposed Order

Siting Standards for Transmission Lines [OAR 345-024-0090]

- Recommends the removal of a mandatory condition that requires the certificate holder to design the facility, specifically in accordance with a National Electric Safety Code (NESC) from 2012.
- Reasoning: The 2012 code is outdated, and the certificate holder is already required to comply with Oregon Public Utility Safety standards, which references the NESC.

Review of Draft Proposed Order

Noise Control Regulation [OAR 345-035-0035]

- Recommends condition update to require a monitoring plan for all noise sensitive properties that have not agreed to a noise waiver and are within one dBA of the anti-degradation threshold, or within one dBA of the maximum noise levels (50 dBA) are measured at any noise sensitive property.

Public Comments

Public Comments

- As of February 14, 2019 the Department has received approximately 260+ comments
- Issue 1: Related the Economic Feasibility of the Project
- **Issue 2: Related to Raptor Surveys; Habitat Mitigation; Federal Eagle Protection**
- Issue 3: Related to Changes in Technological Capacity to Reduce Impacts to Avian Species
- Issue 4: Legitimacy of Agency Action Due to Pending Oregon Supreme Court Review
- Issue 5: General Environmental Concerns
- Issue 6: ODOE's Review of the Facility in the Context of Climate Change
- **Issue 7: Visual Concerns**



Public Comments

Issue 2: Related to Raptor Surveys; Habitat Mitigation; Federal Eagle Protection

The Department has evaluated this issue and intends to respond in the Proposed Order as follows:

- Existing site certificate conditions require pre-construction raptor surveys and post-construction raptor surveys (every 5 years).
- Existing site certificate conditions require the certificate holder to adhere to a Wildlife Monitoring and Mitigation Plan; construction buffers.
- Existing Habitat Mitigation Plan requires offsets; if surveys indicate more raptor nests than originally anticipated, then ODFW could recommend an “upgrade” in habitat categorization.
- Eagles are not a state sensitive or T&E listed species; Federal acts govern eagle protection.
- Existing site certificate conditions protect raptors. No changes to findings or conditions necessary.
- Compliance with federal laws is obligation of developer outside EFSC process.

Public Comments

Issue 7: Visual Impacts

The Department has evaluated this issue and intends to respond in the Proposed Order as follows:

- The Council previously found that turbines would be visible from some locations but that turbine visibility would either be “negligible” or “not significant.”
- The Council specifically evaluated visual impacts to the Columbia River Gorge National Scenic Area (CRGNSA), and the Deschutes Federal Wild and Scenic River in RFA 2, which was the last amendment request relating to a change in facility design. Also evaluated in Original Final Order.
 - The CRGNSA is located at least 14 miles from the site boundary. Turbine visibility may occur in some public locations along State Route 14 near Wishram, Washington.
 - Deschutes Federal Wild and Scenic River area is located 0.6 miles away. Figures 7-11 of RFA 2 provide visual simulations of turbine visibility at certain areas along the Deschutes River.
- The Department affirms its finding from DPO of compliance with applicable standards, including reliance on previous Council findings to continue to recommend that turbine visibility would not result in significant adverse impacts to Protected Areas, Recreation, or Scenic standards.



Council Deliberation



BREAK

Agenda Item E

PUBLIC COMMENT

Agenda Item F (Information Item)

The Climate Trust

February 22, 2019

Todd Cornett, Secretary



Agenda Item G (Information Item)

Type A/B Amendment Determination Notice

February 22, 2019

Todd Cornett, Secretary



Agenda Item H (Information/Action Item)

Solar PV Rulemaking Update

February 22, 2019

Chris Clark, Rules Coordinator



Presentation Overview

- EFSC Solar PV Rulemaking Project
 - Overview
 - Updates (RAC)
 - Next steps
- LCDC Solar PV Rulemaking Project
 - Overview
 - Updates (new temporary rules)

EFSC Rulemaking Project - Overview

- At its June 29, 2018 meeting, Council directed staff to initiate solar PV rulemaking project.
- A RAC was appointed to provide input on issues and any draft proposed rules that Council may wish to consider.
- RAC discussions are ongoing, no specific rule changes have been proposed.

EFSC Rulemaking Project - Scope

1. Evaluate whether multiple non-EFSC jurisdictional solar PV facilities could aggregate in a way that the aggregate is functionally the size of an EFSC jurisdictional solar PV facility;
2. If it's determined that multiple non-EFSC jurisdictional solar PV facilities could functionally aggregate to the size of an EFSC jurisdictional solar PV facility, to develop new rules that identify objective criteria for determining the circumstances of when multiple non-EFSC jurisdictional solar PV facilities functionally aggregate to the size of an EFSC jurisdictional solar PV facility; and
3. Evaluate whether or not specific standards should be developed for the siting of solar PV facilities, and if so, to develop such standards.

EFSC Rulemaking Project - Question 1

- Question:** Can multiple non-jurisdictional solar PV facilities aggregate in a way that is functionally the size of a jurisdictional solar PV facility?
- Update:** No, a “non-jurisdictional” solar PV facility can not be made subject to Council jurisdiction by rule; however, Council may clarify what it considers to be a single solar PV facility if statute is not clear.
- Next steps:** See recommended refinement of scope under **Agenda Item J**.

EFSC Rulemaking Project - Question 2

Question: Should specific standards be developed for the siting of solar PV facilities?

Update: RAC discussed issues which could potentially require specific standards:

- Toxicity and disposal of solar panels
- Impacts related to glare
- Impacts related to changes in microclimate
- Impacts to wildlife and wildlife habitat*

Next steps: Possible formation of wildlife subcommittee (see **Attachment 2**)



EFSC Rulemaking Project – Next Steps

- RAC meeting scheduled for March 6, 2019 in Salem.
- Possible formation of a wildlife subcommittee (see **Attachment 2.**)
- Anticipated schedule (if changes are proposed):
 - **March/April:** Final RAC meeting to discuss draft rule language.
 - **May:** Draft language presented to Council with request to authorize Notice of Proposed Rulemaking
 - **June:** Rulemaking Hearing before Council
 - **June/July:** Council considers adoption of final rules.



LCDC Rulemaking Project - Overview

- On July 26, 2018, LCDC adopted temporary rules amending language applied to acreage thresholds for siting solar PV facilities on EFU lands under OAR 660-033.
- In September 2018, LCDC initiated rulemaking to consider:
 - Whether to adopt temporary rule language in permanent rules.
 - Whether the current provisions at OAR 660-033-0130(38) adequately protect high-value farmland.
 - Whether to retain, revise or remove the sunset date for the wildlife habitat provisions included at OAR 660-033-0130(38)(h)(F)
- Four RAC meetings for this rulemaking occurred between Oct. and Dec. 2018. ODOE staff participated as RAC members.



LCDC Rulemaking Project - Updates

- LCDC held a Rulemaking Hearing on January 25, 2019.
- In response to a stakeholder request, the public comment period for permanent rules was extended until May 7, 2019.
- LCDC adopted new temporary rules amending OAR 660-033-0130.
- LCDC will hold a second public hearing for this rulemaking and may adopt permanent rules on May 23, 2019.

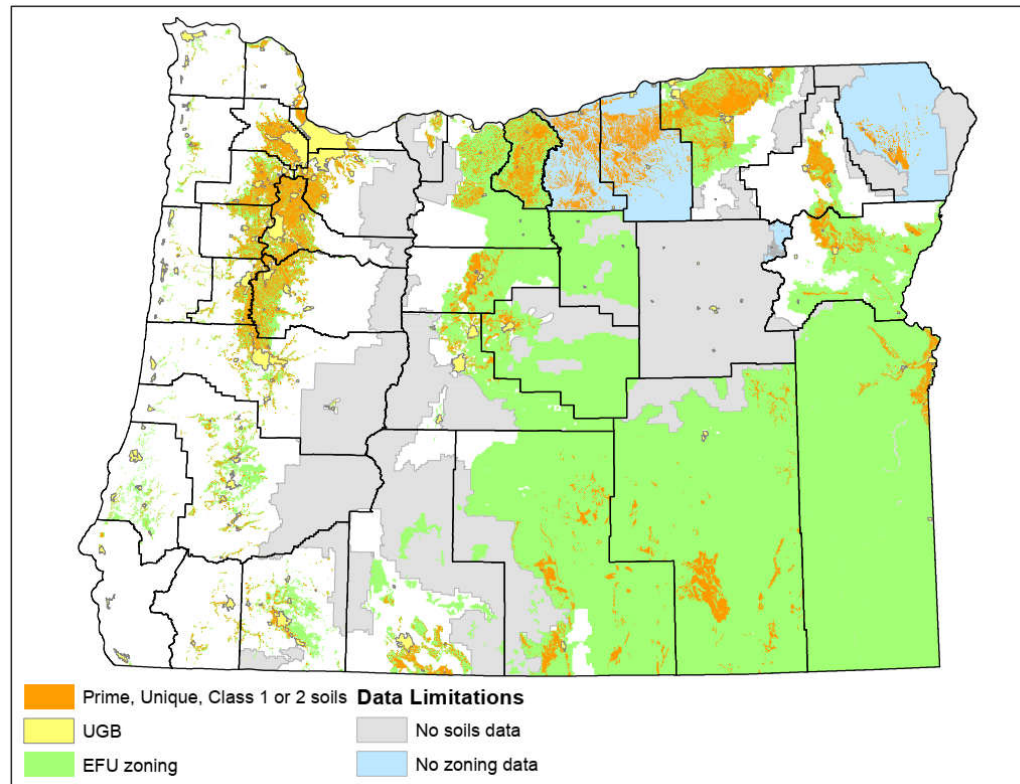


LCDC rulemaking project - Temporary Rules

- Contain previous temporary rule amendments
- Prohibit solar facilities from being located on Class I, Class II, prime and unique soils unless a goal exception is taken.
- Establish that a county may develop a “dual-use development plan” that allows an approved dual-use facility to use up to 20 acres of high-value farmland without a goal exception. Other facilities on high value farmland continue to be capped at 12 acres.
- Repeal sunset provision for the requirement for consultation with Oregon Department of Fish & Wildlife during development of a Solar PV Facility.



LCDC rulemaking project - Temporary Rules



Maximum extent of Prime, Unique, Class I and Class II soils in Oregon.
DLCD. (NOTE: Soil capability classification may be affected by
irrigation status.)

Agenda Item I (Action Item)

Appointment of Rules Coordinator **In accordance with ORS 183.330(2).**

February 22, 2019
Chris Clark, Rules Coordinator



Agenda Item J (Action Item)

Adoption of 2019 Rulemaking Calendar

February 22, 2019

Chris Clark, Rules Coordinator



What is a rule?

Under OAR 183.310(9), “Rule” means



What is a rule?

Under OAR 183.310(9), “Rule” means any agency directive, standard, regulation or statement of general applicability



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Under OAR 183.310(9), “Rule” means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency.* * *

When is a rule required?

An agency must adopt rules to:

- Meet a statutory requirement
- Interpret broad statutory authority delegated by the legislature
- Amend, suspend or repeal existing rules

When is a rule not required?

An agency is not required to adopt rules when:

- Statute is clear and unambiguous
- An exception exists under ORS 183.310(9)(a)-(f)
- The agency is interpreting an existing rule (unless the interpretation is changing)
- The agency announces a general policy in a contested case decision that is applicable to that case and subsequent cases

What is Council's rulemaking authority?

ORS 469.470: The Energy Facility Siting Council shall * * * (2) In accordance with the applicable provisions of ORS chapter 183, and subject to the provisions of ORS 469.501(3), adopt standards and rules to perform the functions vested by law in the council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310.



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ORS 469.470: The Energy Facility Siting Council shall * * * (2) In accordance with the applicable provisions of ORS chapter 183, and subject to the provisions of ORS 469.501(3), adopt standards and rules to perform the functions vested by law in the council including the **adoption of standards and rules for the siting of energy facilities** pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310.



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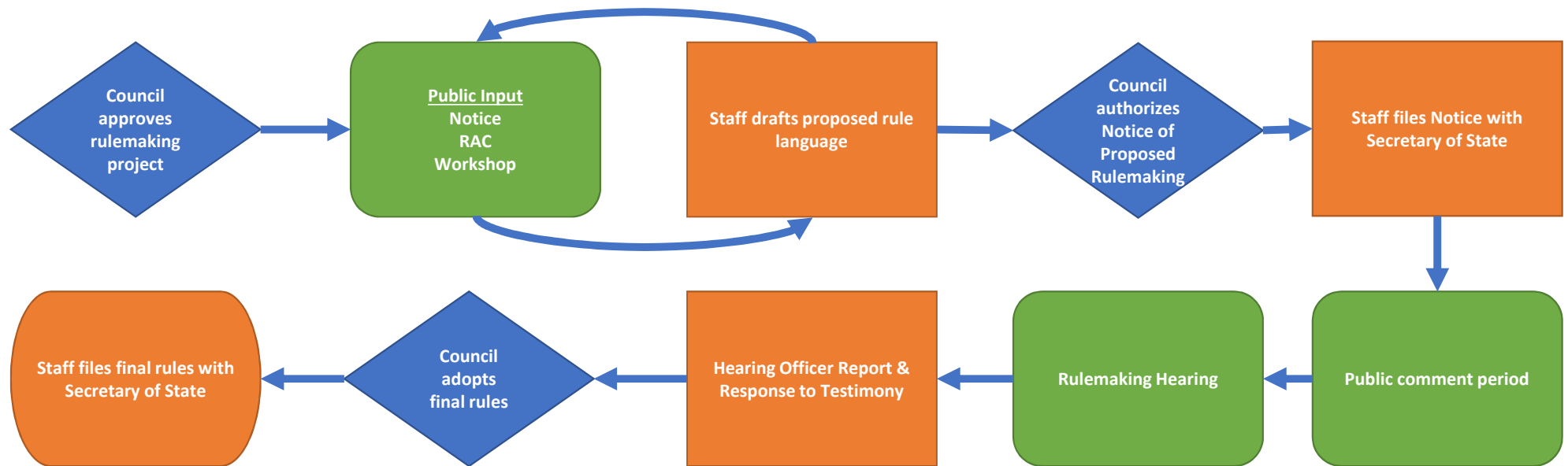


What is Council's rulemaking authority?

Other specific authority found throughout ORS chapter 469:

- ORS 469.480(4): Electric and Magnetic Fields Committee
- ORS 469.503(2)(b): Carbon dioxide emissions standards
- ORS 469.556: Uranium mills and uranium mill tailings disposal facilities and uranium mine overburden
- ORS 469.605(1); 469.607; 469.613: Storage, transportation, and disposal of Radioactive materials

Overview of EFSC rulemaking process



Public involvement in the rulemaking process

ORS 183.333(1): “* * * it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.”

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Status of 2018 rulemaking priorities

Subject Matter	Public Involvement	Status
Administrative Updates	n/a	Ongoing
Periodic Housekeeping	Notice	Ongoing
Phase 2 – Updates to Carbon Dioxide Stds.	RAC	Complete
General Compliance	RAC	On hold
Solar PV - Single Energy Facility	RAC	In progress
Scenic Resources, Protected Areas, & Property Owner Notification	Notice	Pending
Exemptions from Site Certificate	RAC	Pending

Recommended 2019 Rulemaking Schedule

Subject Matter	Public Involvement	Target Timeframe
Statutory Minor Corrections	N/A	Ongoing
Solar PV – Single Energy Facility	RAC	In progress
Trojan ISFSI Compliance (NEW)	Notice	Q1-Q2
Administrative Housekeeping	Notice	Q2-Q3
General Compliance	RAC	Q2-Q3
Scenic Resources, Protected Areas, & Property Owner Notification	Notice	Q3-Q4
Exemptions from Site Certificate	Notice	Q3-Q4
Noise Standard (NEW)	RAC	Q3-Q4
Historic, Cultural & Archaeological Resources (NEW)	RAC/ Workshop	Q4-Q1



Statutory Minor Corrections

Brief Description: Changes to rules will be made to correct references and minor errors without the need for prior notice or hearing as permitted under ORS 183.335(7).

Target Timeframe: Ongoing

Estimated Amount of Time Required: N/A

Recommended Process: N/A



Solar PV Facilities

Brief Description: This project evaluates whether rulemaking is needed to: (1) clarify what is considered to be a single “solar photovoltaic power generation facility” as that term is used in the definition of “energy facility” under ORS 469.300(11); and (2) whether or not there are issues unique to solar PV facilities that require development of specific siting standards similar to those that govern wind facilities, fossil-fueled facilities, transmission lines, and pipelines.

Target Timeframe: In Progress

Estimated Amount of Time Required: 6-12 months

Recommended Process: RAC



Trojan ISFSI Compliance (NEW)

Brief Description: Review of rules applicable to nuclear installations for consistency with Federal laws and regulations. This rulemaking project is proposed as part of the compliance review process for PGE's application to the U.S. Nuclear Regulatory Commission to renew its license for the Trojan Independent Spent Fuel Storage Installation.

Target Timeframe: Q1-Q2

Estimated Amount of Time Required: 3-6 months

Recommended Process: Notice to interested persons



Administrative Housekeeping

Brief Description: Staff have identified a list of issues that could be addressed through periodic “housekeeping” rulemakings. These are small changes to improve clarity and consistency of the rules that do not have significant impacts on stakeholders. The list is continually updated with new issues that are similar in nature.

Target Timeframe: Q2-Q3

Estimated Amount of Time Required: 3-6 months including staff review and development

Recommended Process: No early public participation



General Compliance

Brief Description: This rulemaking will establish improved compliance tools to better support ongoing compliance activities.

Target Timeframe: Q2-Q3

Estimated Amount of Time Required: 4-6 months including staff review and development

Recommended Process: RAC



Scenic Resources, Protected Areas, & Property Owner Notification

Brief Description: This rulemaking would address issues related to the Council's Scenic Resources standard, Protected Areas standard, and property owner notification requirements.

Target Timeframe: Q3-Q4

Estimated Amount of Time Required: 4-6 months including staff review and development

Recommended Process: Notice to interested parties



Exemptions from Site Certificates

Brief Description: This rulemaking would evaluate potential updates to the site certificate exemption process, including clarification of Council's discretion in setting conditions and provisions for ensuring ongoing compliance and termination of an exemption under OAR 345-015-0350.

Target Timeframe: Q3-Q4

Estimated Amount of Time Required: 4-6 months including staff review and development

Recommended Process: Notice to interested parties



Noise Standard (NEW)

Brief Description: Evaluate how DEQ noise control standards apply to energy facilities and if Council should consider adoption of its own noise standard in addition to, or in lieu of, OAR 340-035-0035.

Target Timeframe: Q3-Q4

Estimated Amount of Time Required: 4-6 months, including staff review and development

Recommended Process: RAC



Coordination with Tribal Governments

Brief Description: Evaluates options to encourage communication between applicants and tribal governments to identify historic, cultural, and archaeological resources early in the application process.

Target Timeframe: Q4, 2019 – Q1, 2020

Estimated Amount of Time Required: 4-6 months, including staff review and development

Recommended Process: RAC or Public Workshop



Agenda Item K

**Executive Session to consider
Attorney/Client Privileged Communication
ORS 192.502(9); ORS 40.225**

February 22, 2019



ORS 469.300(11)(a)

“Energy facility” means any of the following:

- (D) A solar photovoltaic power generation facility using more than:**
 - (i) 100 acres located on high-value farmland as defined in ORS 195.300;**
 - (ii) 100 acres located on land that is predominantly cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture; or**
 - (iii) 320 acres located on any other land.**

Adjourn

