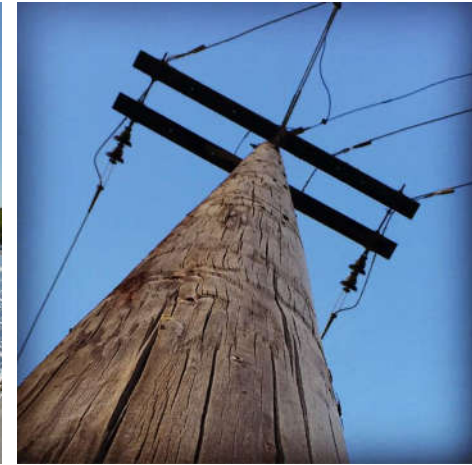


# Oregon Department of **ENERGY**

Energy Facility Siting  
Council Meeting

Oregon Dept of Energy  
Meitner Conference  
Room  
550 Capitol St. NE  
Salem

October 25, 2019



# Opening Items:

- Call to Order
- Roll Call
- Announcements

# Announcements:

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- 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:

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- 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)

## **Shepherds Flat Central: Council Decision on the Proposed Order on Request for Amendment 2 of the Site Certificate**

October 25, 2019

Chase McVeigh-Walker, Senior Siting Analyst



# Presentation Overview:

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- Facility Overview and Site Certificate History
- Request for Amendment (RFA) 2 Procedural History
- RFA2 Proposed Changes
- Proposed Order (Action Item)

# Facility Overview

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**Certificate Holder:**

South Hurlburt Wind, LLC

**Certificate Holder Parent Company:**

Caithness Energy, LLC; subsidiary of Caithness Equities Corporation

**Type of Facility:**

116 wind turbines (maximum generating capacity of 290 megawatts)

**Relating or Supporting Facilities:**

Electrical collection system  
Collector substation  
Interconnection transmission line  
Meteorological towers  
SCADA system  
Access roads

# RFA2 – Requested Modifications

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- Requests the authorization to lower the minimum aboveground wind turbine blade tip clearance, from 25 to 21.5 meters (~82 feet to 71 feet), for two specific wind turbines, Turbines 368 and 370.
- The proposed “repowering” demonstration activity would replace wind turbine blades and modify the nacelles of the two turbines.\*

## Condition Changes

- Condition 26

\*Note that the proposed repowering would not change the approved maximum blade tip height of 150 meters.



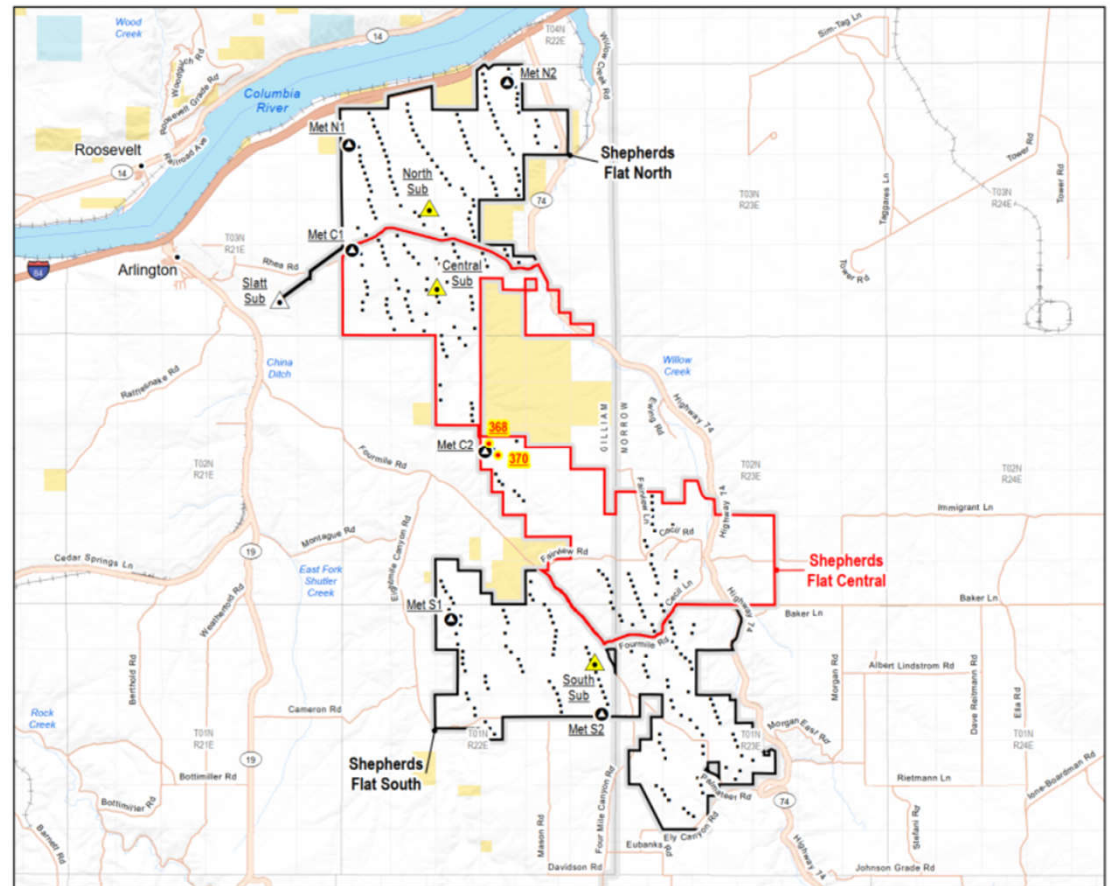
# Facility Site/Site Boundary Location 1 of 2

## Site Boundary

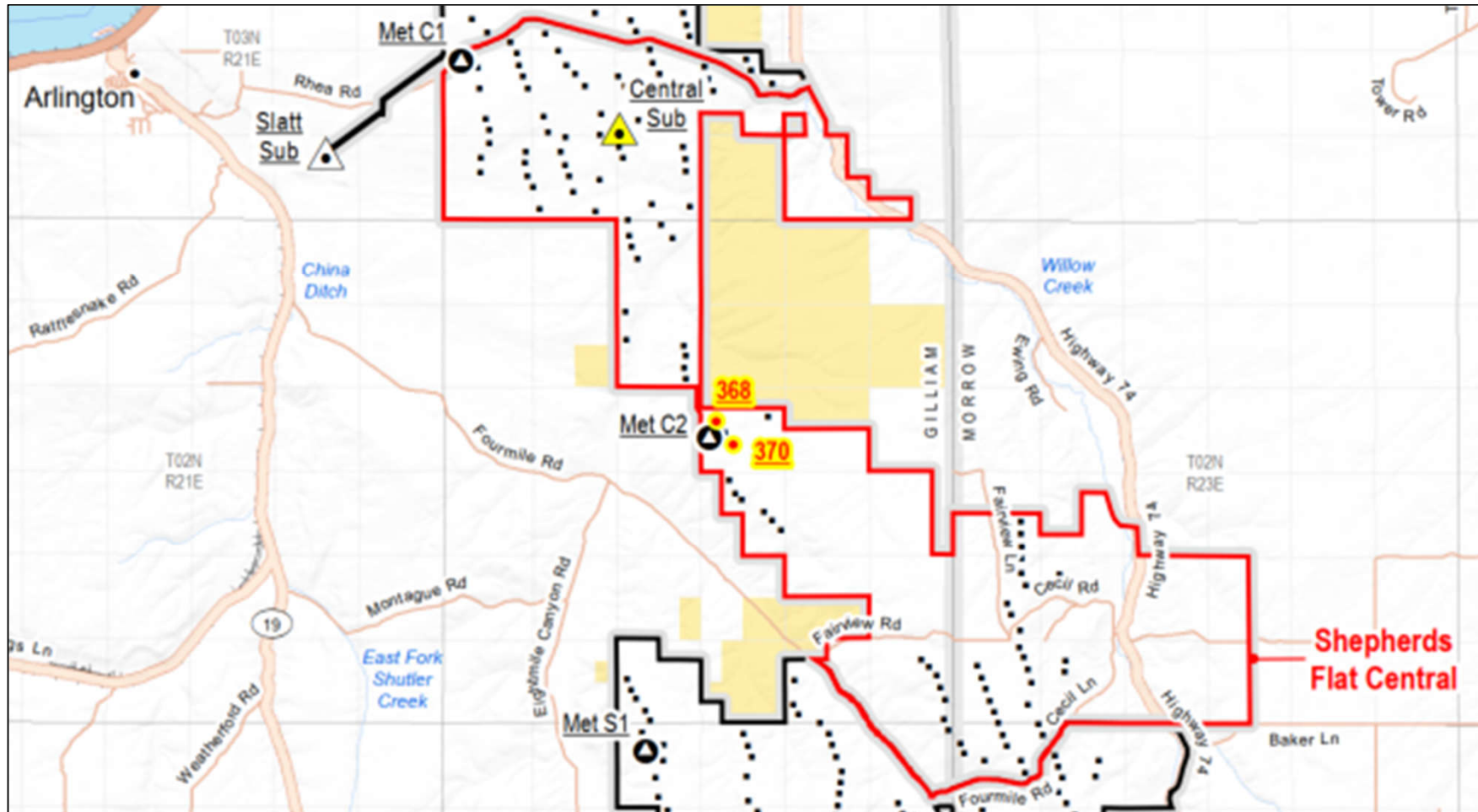
- Contains approximately 11,769 acres
- Private Land in Gilliam and Morrow Counties

## Site Certificate History

- Site Certificate effective July 25, 2008
- Site Certificate Amended on March 12, 2010 (Amendment 1)
- Construction completed 2012



# Facility Site/Site Boundary Location 2 of 2



# RFA2 – Requested Modifications

Requirement	Responsible Party	Date
Preliminary Request for Amendment 2	Certificate Holder	08/26/2019
Type B Determination	ODOE	09/05/2019
Complete RFA2 Received	Certificate Holder	09/23/2019
Draft Proposed Order Issued (Type B)	ODOE	09/24/2019
Comment Period (21-days)	ODOE	10/15/2019*
Proposed Order/Public Notice	ODOE	10/21/2019
Council review of Proposed Order (today)	EFSC	10/25/2019
Final Order/Amended Site Certificate	EFSC	TBD

\*Approximately 33 individuals received three extra days in the comment period, closing on 10/18/2019.



# Overview of Draft Proposed Order

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No substantive changes in findings in Draft Proposed Order for the following standards:

- Organizational Expertise
- Soil Protection
- Land Use
- Protected Areas
- Retirement and Financial Assurance
- Threatened and Endangered Species
- Scenic Resources
- Historic, Cultural and Archeological Resources
- Recreation
- Public Services
- Waste Minimization
- Cumulative Effects Standard for Wind Energy Facilities
- Siting Standards for Transmission Lines
- Removal-Fill Law
- Water Rights

# Overview of Draft Proposed Order

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

Proposed Order, Section III.A.1. (Starting on page 10)

- Recommend condition 104 (New Condition)  
Specify activities and applicable requirements of the proposed RFA2, to be reported to the Department

# Overview of Draft Proposed Order

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## **Structural Standard [OAR 345-022-0020]**

Proposed Order, Section III.A.4. (Starting on page 13)

- Recommend condition 105 (New Condition)  
Implementation of an ongoing inspection, monitoring and remediation program to address foundation crack issues identified at wind turbine 368 and potential load fatigue issues at wind turbines 368 and 370

# Overview of Draft Proposed Order

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

Proposed Order, Section III.A.4. (Starting on page 19)

- Recommend minor administrative change to condition 83  
Update the referenced location of the Wildlife Monitoring and Mitigation Plan (WMMP)
- Recommend amendment to condition 84  
Clarify applicability of Revegetation Plan requirements to proposed RFA2 activities

# Overview of Draft Proposed Order

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

Proposed Order, Section III.A.5.1. (Starting on page 21)

- Recommend amendment to condition 26  
Specify the minimum blade tip clearance for wind turbines T368 and 370, from 25 meters to 21.5 meters (~82 feet to 71 feet)
- Recommend condition 106 (New Condition)  
Require certificate holder to submit a Notice of Proposed Construction and Alteration to the FAA and ODA for modified Turbines 368 and 370

# Overview of Draft Proposed Order

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## **Noise Control Regulations [OAR 340-035-0035]**

Proposed Order, Section III.A.6.1. (Starting on page 27)

- Recommend condition 107 (New Condition)  
Require certificate holder to provide manufacturer verified noise specifications for T368 and 370

# Review of Proposed Order

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Comments Received on Draft Proposed Order: To be updated after conclusion of the public comment period on October 18<sup>th</sup>.

Substantive changes resulting from comments received: To be updated after conclusion of the public comment period on October 18<sup>th</sup>.

Condition 105 of Attachment A (amended site certificate) of the Proposed Order was administratively changed to remain consistent with the findings made in Section III.A.4. of the Draft Proposed Order.

# Council Decision on the Proposed Order

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## Option 1

Approve Proposed Order and Adopt Final Order

## Option 2

Approve Proposed Order with Modifications and adopt Final Order

## Option 3

Deny Proposed Order, direct staff to make changes and re-issue Proposed Order

# Agenda Item C (Information Item)

## Site Certificate Amendment Process Rulemaking Consideration of Proposed Rules

October 25, 2019

Christopher M. Clark, EFSC Rules Coordinator and Analyst



# Overview

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- Rulemaking History
- Permanent Rulemaking Process
- Rulemaking Issues and Proposed Rules
- Staff Recommendation
- Next steps

# Amendment Rulemaking History

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- **Oct 2017:** Council adopts amendment rules, effective Oct. 24, 2017.
- **Dec. 2017:** Friends of the Columbia Gorge et al. petition the Supreme Court of Oregon for review of rules.
- **Aug. 1, 2019:** Supreme Court of Oregon releases decision finding:
  - One procedural error: Rules approved through Orders EFSC 4-2017 and EFSC 5-2017 held invalid because council failed to substantially comply with ORS 183.335(3)(d); and
  - One substantive error: Judicial review provision in OAR 345-027-0068(3)(e)(E), 345-027-0072(3)(d), and 345-027-0072(5) exceeded Council's statutory authority.
- **Aug. 22, 2019:** Council adopts temporary rules and initiates permanent rulemaking.
- **Aug. 30, 2019:** Department solicits advice from stakeholders.



# Permanent Rulemaking Process

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- Temporary rules may be in effect no longer than 180 days. ORS 183.335(6)(a).
- Rules may be effective no earlier than dates provided in ORS 183.335(1) (e.g. 49 days after notice to legislators is sent.)
- To initiate formal rulemaking Council must issue Notice of Proposed Rulemaking:
  - Provides Statement of Need and Fiscal Impact
  - Sets rulemaking hearing date (if any)
  - Provides opportunity for public to comment on proposed rules.
- After consideration of all comments Council may adopt, amend, or repeal rules.

# Summary of Issues Raised in Advice

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- **Issue 1116:** “There should be no limit on contested case requests that exclude rules used in issuing site certificates, or amendments to site certificates.”
  - Staff recommends this issue be considered in future rulemaking.
- **Issue 1117:** “The public should be provided an opportunity to review and comment on the application for amendment prior to the development of the Draft Proposed Order.”
  - Staff recommends Council consider reinstating the early review and comment period in future rulemaking.
  - Option for public notice of preliminary request for amendment included in issues document.

# Issue 1117 – Option for Public Notice

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(2) After receiving a preliminary request for amendment, the Department shall post an announcement on its website to notify the public that a preliminary request for amendment has been received. The announcement shall include a copy of the preliminary request for amendment.

(3) On the same date the Department posts the announcement under section (2) of this rule, the Department must issue a public notice of receipt of the preliminary request for amendment, subject to the following:

(a) The notice must include:

(A) The addresses of locations where the public may inspect copies of the preliminary request for amendment and the website where the preliminary request for amendment may be found;

(B) The name, address, email address, and telephone number of the Department's representative to contact for additional information;

(C) A description of the requested amendment; and

(D) The location of the site of the requested amendment

(b) The notice must be sent by mail or email to:

(A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;

(B) Persons on any special mailing list set up for the proposed project; and

(C) The property owners listed under subsection (1)(f) of this rule.

# Summary of Issues Raised in Advice

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- **Issue 1118:** “ODOE needs to quit trying to implement an interpretation that requires the public to include all rule references and documents they will use in a contested case request during the public comments.”
  - Because this issue is primarily concerned with rule interpretation and application, staff does not recommend any rulemaking action.
- **Issue 1119:** “The contested case rules should use the Model Rules, unless there is a demonstrated critical need to add something.”
  - Staff recommends this issue be considered in future rulemaking.

# Summary of Issues Raised in Advice

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- **Issue 1120:** “Hearings referees should come from the Oregon Department of Justice...”
  - Because the issue is primarily concerned with Council policy, staff does not recommend any rulemaking action.
- **Issue 1121:** “The determination regarding whether or not a contested case is allowed should rest with determining that there is a conflict between the interpretation or application of the rules as defined by ODOE and EFSC and the interpretation or application of the rules as is perceived by the public.”
  - Because this issue is primarily concerned with rule interpretation and application, staff does not recommend any rulemaking action.

# Summary of Issues Raised by Staff

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- **Issue 1103:** Rules do not clearly distinguish between contested case notices under ORS chapter 183 and other public notices under ORS chapter 469.
  - Amend OAR 345-015-0014; 345-015-0230; 345-027-0371 to establish separate procedural requirements for “contested case notices” and public notices on proposed order and notice of opportunity to request a contested case on a proposed order.
  - Consider consolidation of public notice on proposed order on request for amendment and notice of opportunity to request a contested case in future rulemaking

# OAR 345-015-0014 (Att. 3, pp. 1-2)

## OAR 345-015-0014 - Contested Case Notices

(1) The Department ~~shall~~must issue notices for Council contested case proceedings as provided in OAR 137-003-0001. ~~The notice, at a minimum, must include:~~

- ~~(a) A caption with the name of the person or agency to whom the notice is issued;~~
- ~~(b) A short and plain statement of the issues to be considered under OAR 345-015-0016, and a reference to the particular sections of the statute and rules involved;~~
- ~~(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;~~
- ~~(d) A statement of the party's rights to participate in the hearing a party or limited party;~~
- ~~(e) A statement of the agency's authority and jurisdiction to hold a hearing on the issues; and~~
- ~~(f) A statement of the time and place of the hearing; and~~
- ~~(g) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act as described in ORS 183.415(3)(g); and~~

~~(a) Contested case notices regarding proposed orders for site certificate applications shall include:~~

- ~~(A) A date by which persons must request party or limited party status;~~
- ~~(B) The date of the pre-hearing conference;~~
- ~~(C) The time and place of the hearing;~~

~~(b) Contested case notices regarding proposed orders for site certificate amendments shall include:~~

- ~~(A) The date of the pre-hearing conference;~~
- ~~(B) The time and place of the hearing;~~
- ~~(C) The issues and the parties the Council identified for the contested case as described in OAR 345-027-0071.~~

~~(2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council decision to grant a contested case hearing under 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.~~

~~(3) The Department shall~~must send a contested case notice by registered or certified mail to the applicant or certificate holder, and to each party to the contested case, following persons:

- ~~(a) For a contested case notice on a proposed order as described in OAR 345-015-0230, to the applicant and to all persons who commented in person or in writing on the record of the public hearing described in 345-015-0220;~~
- ~~(b) Following the Council's decision to grant a contested case proceeding on a proposed order on an application for a site certificate for a special criteria facility, to the applicant and to all persons who commented in person or in writing on the record of the public hearing on the proposed order described in OAR 345-015-0320;~~
- ~~(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0071 or 345-027-0090, to the certificate holder and to the parties the Council granted contested case party status to;~~

~~(d) For Council contested case proceedings described under OAR 345-029-0070, 345-029-0100 or 345-060-0004, to persons who have an interest or represent a public interest in the outcome of the proceeding;~~

~~(4) The Department shall request that the applicant notify the hearing officer and the Department, by the date described in subsection (1)(a), of any issues the applicant desires to raise in the contested case proceedings described in subsections (3)(a) and (b).~~

# OAR 345-015-0230 (Att. 3, pp. 4-5)

(3) Following issuance of the proposed order, the Department ~~shall issue a contested case notice, as described in OAR 345-015-0014. In addition, as required under ORS 469.370(4), the Department shall~~ must issue a public notice of the proposed order, subject to the following:

(a) The public notice of the proposed order must include:

(A) A description of the facility and the facility's general location;

(B) A summary of the recommendations included in the Proposed Order;

(C) A description of the process and deadline for requests to participate as a party or limited party in the contested case under OAR 345-015-0016;

(D) The date of the prehearing conference, if any; and

(E) The date of the hearing; and

(b) The Department must and shall send the notice by mail or email to:

(A) All persons on the Council's general mailing list; ~~as defined in OAR 345-011-0020 and to;~~

(B) All persons on any special mailing list set up for the proposed project;

(C) All persons who commented in person or in writing on the record of the public hearing conducted under OAR 345-015-0220; and

(D) The property owners ~~including a mailing list made up of those persons~~ listed in Exhibit F of the site certificate application as updated by the applicant upon the request of the Department.

(4) On the same date as notice is issued under section (3) of this rule, the Department must notify the applicant that it must notify the hearing officer and the department of any issues the applicant intends to raise in the contested case proceedings by the date established in paragraph (3)(a)(C) of this rule.

# OAR 345-027-0371 (Att. 3, p. 26)

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(4) On the same date the notice of proposed order as described in section (2) is issued, the Department ~~shall~~must send a notice of the opportunity to request a contested case by:

(a) Sending the notice by mail or email to:

(A) ~~to~~ The certificate holder; and

(B) ~~to a~~ All persons who commented in person or in writing on the record of the public hearing as described in OAR 345-027-0367; and.

(b) The notice ~~shall~~must include the deadline for requesting a contested case and restatements of sections (5), ~~(6), (7), (8) and~~ through (9) of this rule.

# Summary of Issues Raised by Staff

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- **Issue 1091:** Availability of electronic transmission has reduced the number of printed copies of applications and other materials the Department needs for review.
  - Amend OAR 345-027-0110(4) and 345-027-0220(3) to reduce the required number of paper copies of application for termination and request for approval of gas storage testing pipeline from one original and two copies, to just two copies.

# OAR 345-027-110 (Att. 3, p. 9)

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(4) In an application for termination of the site certificate, the certificate holder ~~shall~~must include a proposed final retirement plan for the facility and site. The certificate holder ~~shall~~must submit, to the Department ~~an original and~~ two printed copies of the application for termination and the proposed final retirement plan, and an electronic version of the application for termination and the proposed final retirement plan in a non-copy-protected electronic format acceptable to the Department. ~~Upon a request by the Department, t~~The certificate holder must submit additional printed copies of the application for termination and the proposed final retirement plan ~~for members of the Council to the Department upon request. In addition to the printed copies, the certificate holder shall submit the full copies of the application for termination and the proposed final retirement plan in a non-copy-protected electronic format acceptable to the Department.~~

# OAR 345-027-0220(3) (Att. 3, p 12.)

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(3) The certificate holder ~~shall~~must submit to the Department a written request for approval to construct, operate and retire a gas storage testing pipeline with the fee required by the fee schedule established under ORS 469.441. The certificate holder ~~shall~~must submit to the Department, the original and two paper copies of the request, and an electronic version of the full request in a non-copy-protected electronic format acceptable to the Department. The certificate holder ~~shall~~must provide additional copies to the Department upon request and copies or access to copies to any person requesting copies. ~~In addition to the printed copies of the request for approval, the certificate holder shall submit the full request in a non-copy protected electronic format acceptable to the Department.~~

# Summary of Issues Raised by Staff

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- **Issue 1062:** The Council recently adopted rules in OAR 345-020 and 345-021 to better align property owner listing requirements with local government practice.
  - Amend OAR 345-027-0360(1)(f) to require list of property owners to be based on property which the subject of the request for amendment;
  - Amend all references to OAR 345-021-0010(1)(f) in Division 27 to OAR 345-027-0360(1)(f).

# Issue 1062 – OAR 345-027-0360(1) (p. 20)

(f) ~~An updated list of the owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).~~ A list of the names and mailing addresses of property owners, as described in this rule:

(A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:

(i) Within 100 feet of property which the subject of the request for amendment, where the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of property which is the subject of the request for amendment, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 500 feet of property which is the subject of the request for amendment, where the subject property is within a farm or forest zone; and

(B) In addition to incorporating the list in the request for amendment, the applicant must submit the list to the Department in an electronic format acceptable to the Department.

# Summary of Proposed Rules

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- **Amend** affected rules in OAR 345-015 and 345-025 to re-adopt changes made by October 2017 rulemaking.
- **Repeal** all OAR 345-027 rules adopted or amended by October 2017 rulemaking.
- **Permanently adopt** temporary rules in OAR 345-027, and:
  - Amend OAR 345-015-0014; 345-015-0016; 345-015-0080; 345-015-0230; and 345-027-0371 to establish separate procedural requirements for contested case notices and public notices on a proposed order.
  - Amend OAR 345-027-0110(4) and 345-027-0220(3) to reduce the number of paper copies required for a request for termination or request for approval to construct, operate and retire a gas storage testing pipeline.
  - Amend OAR 345-027-0360(1)(f) and 345-027-0110(5) to adopt language that better aligns property owner notification requirements with local government practice.
  - Additional changes for clarity and consistency.

# Staff Recommendation

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- Authorize Staff to Issue Notice of Proposed Rulemaking including Statement of Need and Fiscal Impact.
- Schedule hearing for November meeting.
- Specify that Council will initiate rulemaking to evaluate amendment rules within two years of adoption.

# Next Steps

Permanent Rulemaking Steps	Completion Date
<b>Council approves temporary rules and initiates permanent rulemaking process.</b>	Aug. 22, 2019
Staff solicits written advice from stakeholders	Aug. 28 – Sept. 27, 2019
Staff drafts proposed new or amended rules and identifies any rules for proposed repeal	Oct. 10, 2019
Staff prepares Notice of Proposed Rulemaking	Oct. 10, 2019
<b>Council authorizes staff to issue Notice</b>	<b>Oct. 25, 2019</b>
<b>Staff issues Notice</b>	<b>Oct. 25, 2019</b>
Public Comment Period	Oct. 25 – Nov. 27, 2019
Rulemaking Hearing	Nov. 21, 2019
Staff prepares draft final rules for Council	Nov. 27, 2019 – Dec. 5, 2019
<b>Council considers public comments and testimony and adopts, amends, or repeals permanent rules</b>	Dec. 20, 2019
Staff submits permanent rule filing to Secretary of State	Dec. 23, 2019
Permanent rules are effective	Jan. 1, 2020
Last date temporary rules could be effective	Feb. 18, 2020
Staff convenes RAC to evaluate effectiveness of the amendment rules	Jan. 1, 2022



BREAK

# Council Deliberation



# Agenda Item D

## **PUBLIC COMMENT**

# Adjourn

