

Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Columbia Gorge
Discovery Center
5000 Discover Drive
The Dalles, OR

Nov. 21-22, 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 (Information Item)

2020 EFSC Meeting Dates

November 21, 2019

Michiko Mata, Division Assistant



2020

EFSC Proposed Meeting Dates

January

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

March

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August

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2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

- Jan 23-24, 2020
- Feb 20-21, 2020*
- Mar 26-27, 2020*
- Apr 23-24, 2020
- May 21-22, 2020
- June 25-26, 2020
- July 23-24, 2020
- Aug 20-21, 2020
- Sept 24-25, 2020
- Oct 22-23, 2020
- Nov 19-20, 2020
- Dec 17-18, 2020

2020 Proposed EFSC Meeting Dates - Locations To Be Determined

	January 23-24	February 20-21	March 19-20	March 26-27	April 23-24	May 21-22	June 25-26	July 23-24	August 20-21	September 24-25	October 22-23	November 19-20	December 17-18
Chair Hanley	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	yes	yes	yes
Kent Howe	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Marcy Grail	yes	yes	yes	no	no	yes	yes	yes	yes	yes	yes	yes	yes
Mary Winters	yes	no	yes	yes	yes	yes	yes	not sure	not sure	yes	yes	yes	yes
Jordan Truitt	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes

- Identify potential meeting dates 12 months in advance for planning
- Focusing on the first quarter meeting dates
- Communicating meeting locations to council once determined

Agenda Item C (Action Item)

Annual Financial Assurance Review

November 21, 2019
Sisily Fleming, Fiscal Analyst



Annual Financial Assurance Review

2020 Proposed Financial Institutions				
Financial Institution	Credit Rating Institution			
	Moody's	S & P's	Fitch	A.M. Best
Letter of Credit				
Bank of Nova Scotia (NY Agency)	Aa2		AA-	
MUFG Union Bank, N.A.	A1	A	A	
JP Morgan/Chase Bank, N.A.	Aa1 ↑		AA ↓	
Wells Fargo Bank, N.A.	Aa1	A+ ↓	A+	
Royal Bank of Scotland Connecticut Branch		BBB ↓	A ↑	
Bank of America N.A.	Aa2 ↑	A+	A+ ↓	
CoBank		AA-	AA-	
Bank of the West	A2 ↓	A ↑	A	
Helaba (NY Branch of Landesbank Hessen-Thuringen GZ)	Aa3	A	A+	
Natixis (NY Branch)	Aa3	A+ ↑	A+ ↑	
Royal Bank of Canada (NY Branch)	Aa2	AA-	AA	
Barclay's Bank, PLC (NY Branch)	A2	A	A	
Bond				
Federal Insurance Co	Aa3	AA	AA ↑	A++
Liberty Mutual Insurance Company	A2	A	BBB+	A
SAFECO Insurance Co of America	A2	A	A-	A
Westchester Fire Insurance Co	Aa3	AA	AA	A++
Fidelity & Deposit Co of MD		AA-	B-	A+

Agenda Item D (Hearing)

Public Hearing on Permanent Amendment Rulemaking

November 21, 2019

Christopher M. Clark, Rules Coordinator



Overview

- Procedural History
- Summary of Proposed Rules
- Rulemaking Schedule
- Conduct of Hearing

Procedural History

- **Oct 2017:** Council adopts amendment rules, effective Oct. 24, 2017.
- **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.
- **Oct. 25, 2019:** Council approves proposed rules and files notice of proposed rulemaking with Secretary of State.

Summary of Proposed Rules

- **Amend** affected rules in OAR 345-015 and 345-025 to re-adopt changes made by October 2017 rulemaking.
 - 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.
- **Repeal** all OAR 345-027 rules adopted or amended by October 2017 rulemaking.
- **Permanently adopt** temporary rules in OAR 345-027, and:
 - Amend OAR 345-027-0110(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 345-027-0110; 345-027-0360(1)(f); 345-027-0367; 345-027-0368; 345-07-0371; 345-027-0372; 345-027-0400 to adopt language that better aligns property owner notification requirements with local government practice.
 - Amend OAR 345-027-0375(3) to clarify that Council must apply applicable laws and Council standards in effect on the date amended site certificate is executed (not issued)



Summary of Proposed Rules

- Additional changes for clarity and consistency.
 - Use of “must” and “may not” in place of “shall” and “shall not”
 - Consistent labeling of section and paragraphs
 - Formatting and punctuation of lists
 - Elimination of (s) construction.

Rulemaking Schedule

Permanent Rulemaking Steps	Completion Date
Council approves temporary rules and initiates permanent rulemaking process.	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
Council authorizes staff to issue Notice	Oct. 25, 2019
Staff issues Notice	Oct. 25, 2019
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
Council considers public comments and testimony and adopts, amends, or repeals permanent rules	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



Conduct of Hearing

- If you wish to provide oral comments:
 - Fill out a registration card before the hearing adjourns
 - When your name is called come forward and state your name for the record. If you represent an organization, state the name of the organization.
 - Summarize any written material and provide a copy to the Hearing Officer.
 - The Council will not respond to questions or comments during the hearing.
- Written comments must be received by November 27, 2019 at 5 p.m. to be considered.

PUBLIC COMMENT



Agenda Item E (Information Item)

Application Process Overview

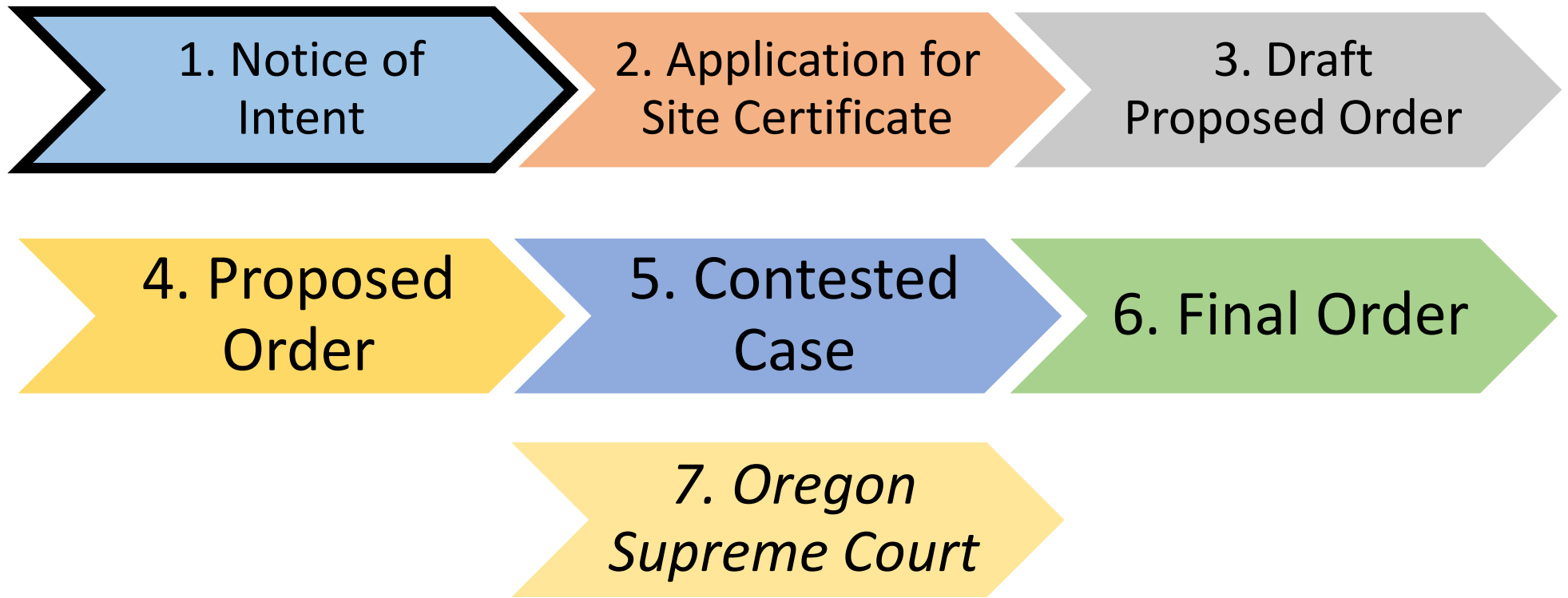
November 22, 2019

Todd Cornett, Council Secretary

Maxwell Woods, Senior Policy Advisor



Application Review Process



Application Review Process

1. Notice of Intent (#1 - Notice of Intent)

Contents:

- Applicant and Participating Persons
- Project Description
- Project Location
- Transmission or Pipeline
- **Adjacent Property Owners Name and Addresses**
- Maps
- Non-Generating Facility Need
- **Choice of Land Use Standards (EFSC or Local Jurisdictional**
- **Significant Environmental Impacts**
- Adverse Impacts of Construction and Operation
- Water Use
- Carbon Dioxide
- Applicable Oregon Administrative Rules and Local Land Use Requirements
- Schedule to Submit an Application
- Consultation with State Commission on Indian Services

Application Review Process

1. Notice of Intent (#1 - Notice of Intent)

Process Steps:

- Submitted by Applicant
- Posted to website
- Newspaper Notice
- Public Notice with Comment
Deadline to:
 - Property Owners
 - Gov Delivery
- Reviewing Agency Memo with
Comment Deadline
 - State Agencies
 - Local Governments
 - Tribal Governments
- Optional Public Information
Meeting (in vicinity of project)
- Expiration of NOI – 2 Years

Application Review Process

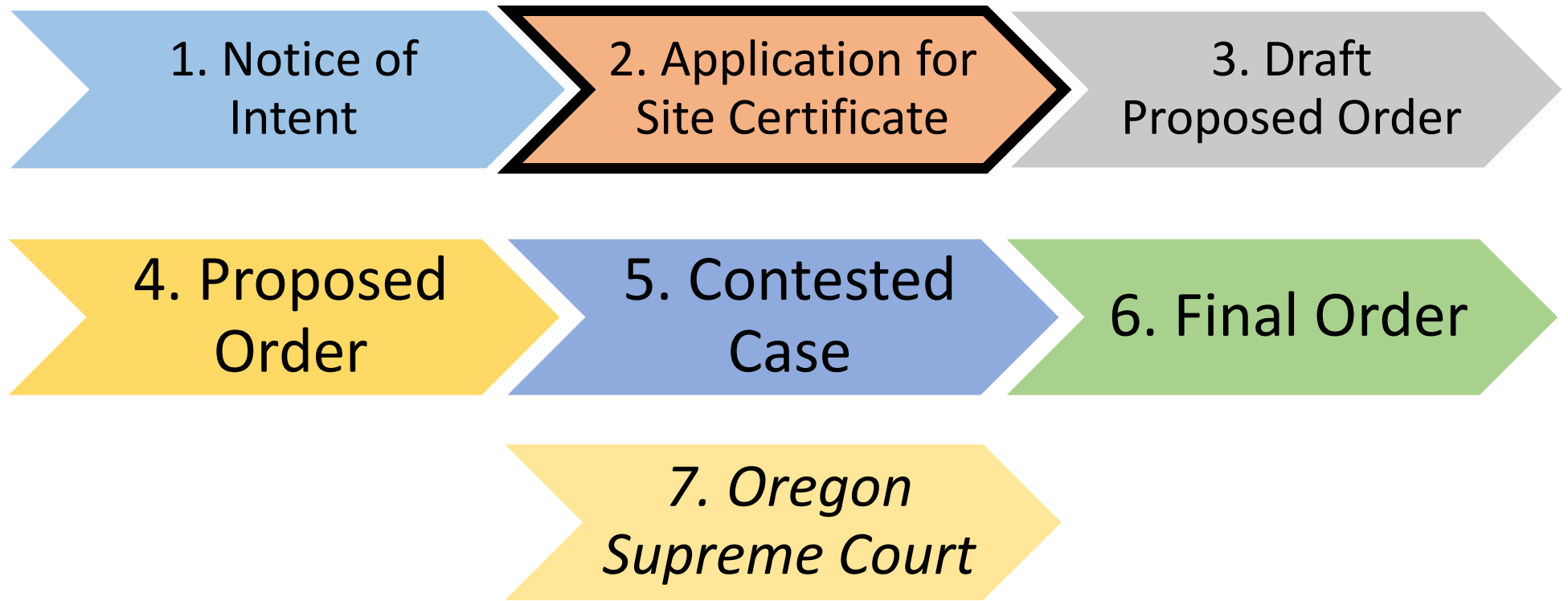
1. Notice of Intent (#2 - Project Order)

Description: Identifies the applicable standards, statutes, rules, ordinances that must be addressed by the applicant for the specific proposal.

Deadline: Staff must issue within 140 days of receipt of NOI

Updates: Can be updated at any time prior to issuance of Final Order

Application Review Process



Application Review Process

2. Application for Site Certificate

Contents:

- Applicant and Participating Persons
- Proposed Facility Description
- Proposed Facility Location
- Organizational Expertise
- Permits Required
- **Adjacent Property Owners**
- Materials Analysis
- Geologic and Soil Stability
- Soil Conditions
- Wetlands and other Jurisdictional Waters
- Land Use
- Protected Areas
- Financial Capability
- Non-Generating Facility Need
- Water Use
- **Fish and Wildlife Habitat**
- **Threatened and Endangered Species**
- Scenic Resources
- **Historic, Cultural and Archaeological Resources**
- Recreation Opportunities
- Waste Minimization
- Site Restoration
- Noise
- Carbon Dioxide Emissions
- Other

Application Review Process

2. Application for Site Certificate

Application Overview

- Evidence based process
- Applicant representations
- Not a “form-based” application
- Information adequate for the Council to make findings or impose conditions on all standards

Application Review Process

2. Application for Site Certificate (Preliminary)

Process Steps:

- Submitted by applicant
- **Posted to website**
- Reviewing Agency memo with comment deadline
 - state agencies
 - local governments
 - tribal governments
- 60 day deadline to determine complete or incomplete
 - request for additional information
 - deadline to submit

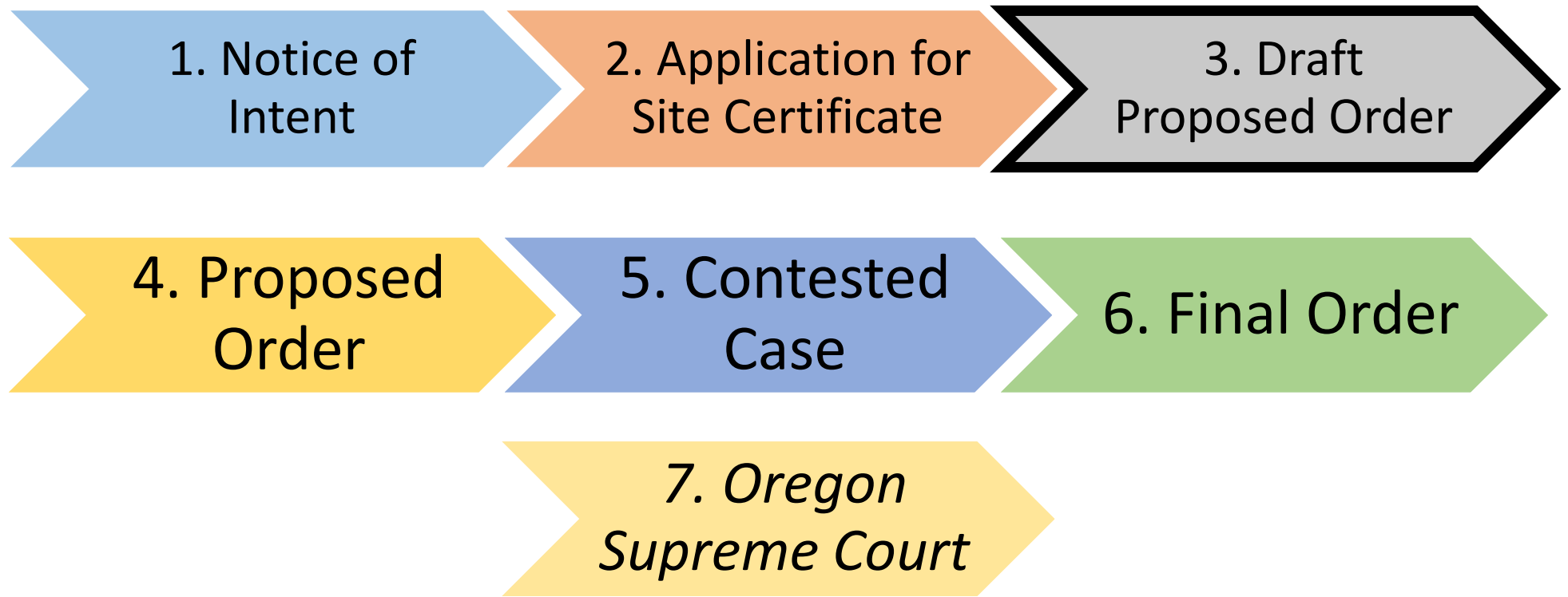
Application Review Process

2. Application for Site Certificate (Complete)

Process Steps:

- Submitted by applicant
- Posted to website
- Newspaper notice
- Public notice (not a Comment Period):
 - property owners
 - Gov Delivery
- Notice to reviewing agencies with comment deadline
 - state agencies
 - local governments
 - tribal governments
- Optional public information meeting (in vicinity of the project)

Application Review Process



Application Review Process

3. Draft Proposed Order

Description: Staff's initial evaluation of the application against all applicable standards, including recommended:

- Findings of facts
- Conclusions of law
- Conditions of approval

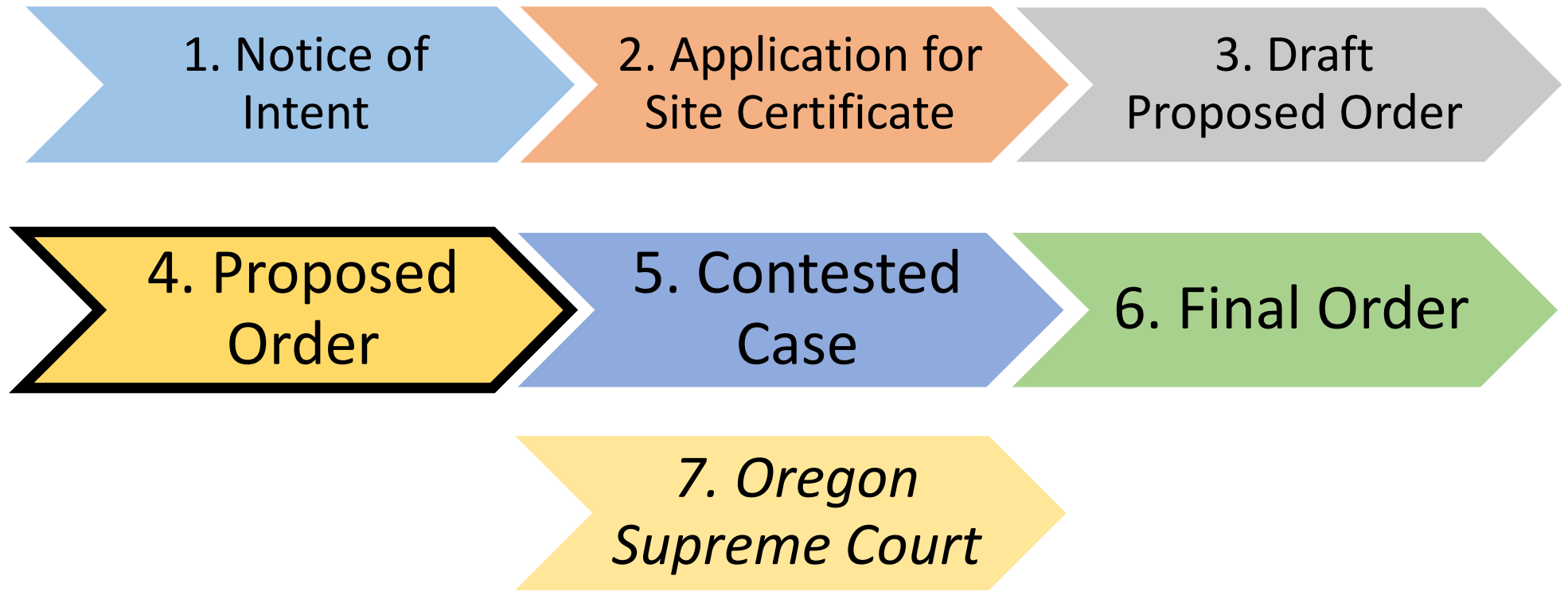
Application Review Process

3. Draft Proposed Order

Process Steps:

- Issued by staff
- Posted to website
- Newspaper notice
- Notice and comment period
 - property owners
 - reviewing agencies
 - Gov Delivery
- Public hearing
 - In vicinity of project
 - In front of council if possible
- Applicants response to comments
- Council review of the DPO

Application Review Process



Application Review Process

4. Proposed Order

Description: Staff's secondary evaluation of the application against all applicable standards, taking into consideration:

- Public comments
- Applicant's response to public comments
- Council comments

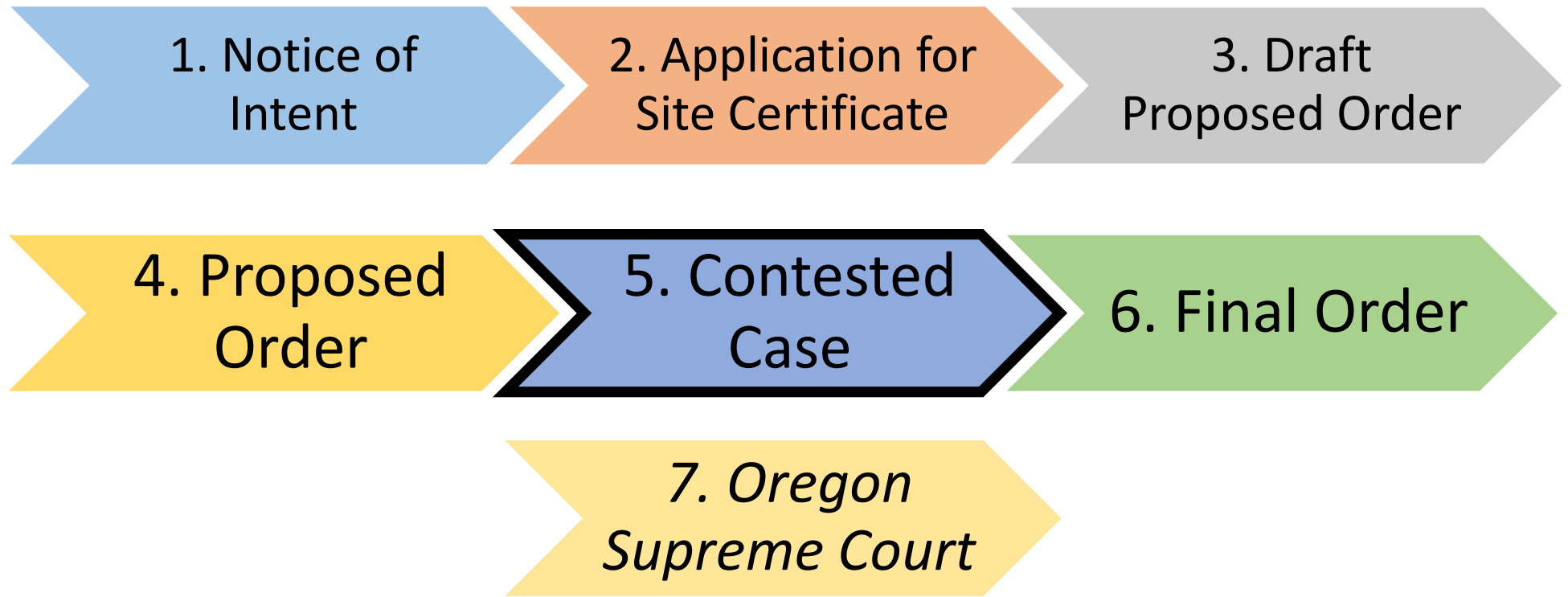
Application Review Process

4. Proposed Order

Process Steps:

- Issued by staff
- Posted to website
- Proposed Order notice
 - property owners
 - reviewing agencies
 - Gov Delivery
- Notice of opportunity to request participation in a contested case
 - Persons who commented during draft proposed order

Application Review Process



Application Review Process

5. Contested Case

Description: Independent Third Party Evaluation of Specific Issues

- Appointed hearing officer
- Issues
 - raised during DPO
 - determined by hearing officer to meet the requirements
- Parties
 - those established by hearing officer
 - applicant
 - Staff with DOJ

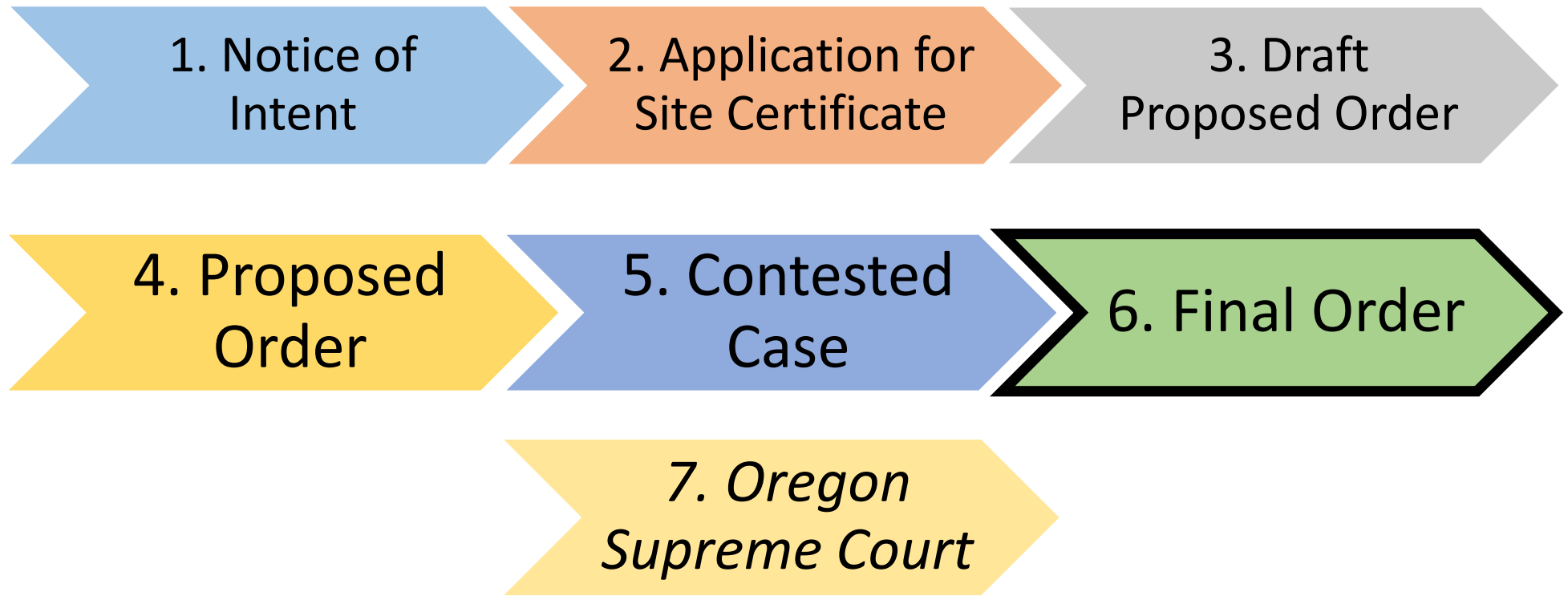
Application Review Process

5. Contested Case

Process Steps:

- Contested case notice with deadline to request party status
- No requests concludes CC
- Hearing officer order on requests. All denials concludes CC.
- Potential interlocutory appeal
- Pre-hearing conference
- Written direct testimony
- Written rebuttal testimony
- Requests for cross examination
- Oral cross-examination hearing
- Written closing arguments
- Hearing officer proposed contested case order
- Written exceptions to proposed contested case order
- Written responses to exceptions
- Council hearing on proposed contested case order and exceptions

Application Review Process



Application Review Process

6. Final Order

Description: Council's evaluation of the application against all applicable standards, taking into consideration:

- Proposed Order
- Hearing Officer Contested Case Order
- Council May Adopt, Modify and Adopt, or Reject
- Issues Site Certificate if Adopted

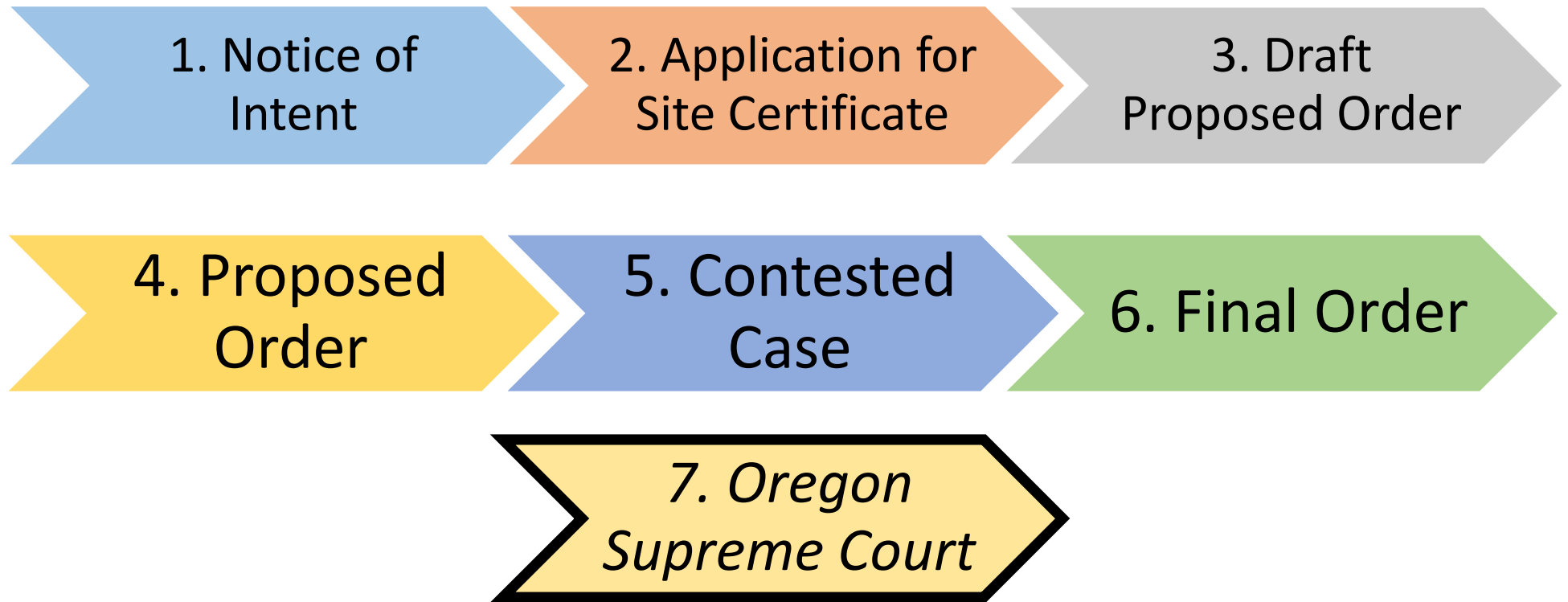
Application Review Process

6. Final Order

Process Steps:

- Evaluated and voted on by council
 - statutory deadlines
- Posted to website
- Decision is served to contested case parties
 - option to request rehearing
 - act on any rehearing requests
- Courtesy notice of council final decision
 - GovDelivery

Application Review Process



Application Review Process

7. Oregon Supreme Court

Process Steps:

- 60 Day Deadline to Submit Appeal to Oregon Supreme Court
- 6 Month Deadline for Supreme Court to Render a Decision

Application Review Process

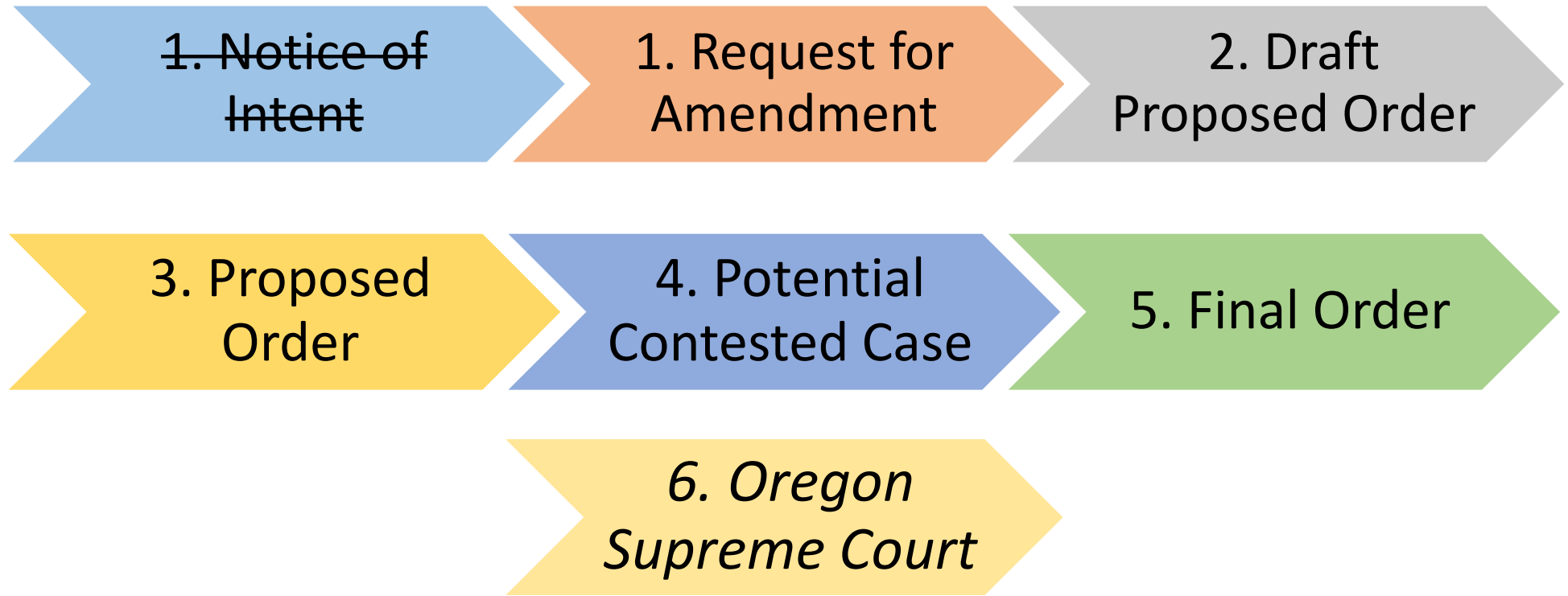
Monthly Siting Report:

- Monthly updates of changes in project status and new projects.
- Current numbers signed up to receive.
- Available on Website at

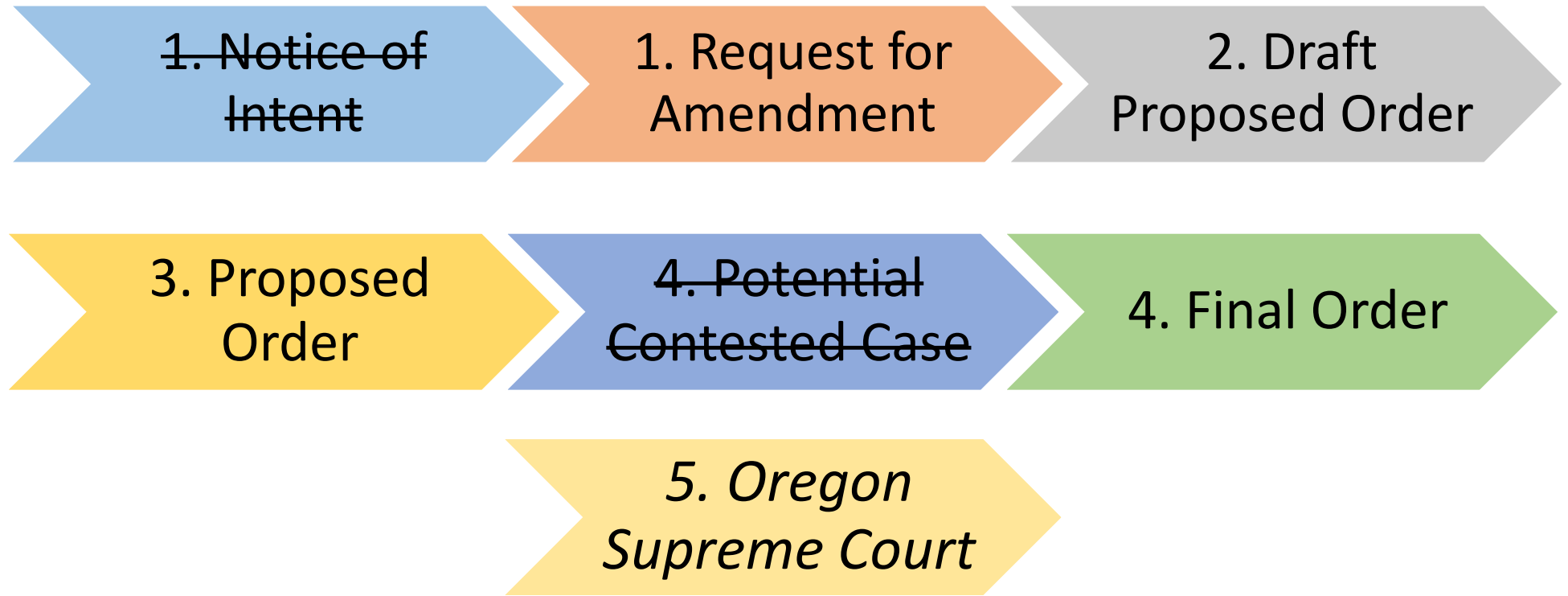
<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/EFSC-Project-Updates.aspx>



Request for Amendment Review Process – Type A



Request for Amendment Review Process – Type B



**WITHDRAWN AT THE REQUEST OF THE PRESENTER
NO PRESENTATION GIVEN**

Agenda Item F (Information Item)

Langenburg Technologies Overview

November 22, 2019

Richard Barnes

Chief Operation Officer, Naer, Inc.



Agenda Item G (Information Item)

Oregon Department of Fish and Wildlife Fish and Wildlife Habitat Mitigation Policy Overview

November 22, 2019

Jon Germond, ODFW Habitat Resources Program Manager

Sarah Reif, ODFW Energy Coordinator



Agenda Item H

PUBLIC COMMENT

Agenda Item I (Action Item)

Port Westward Generating Project Review of the Proposed Order on Request for Amendment 11

November 22, 2019

Christopher M. Clark, Policy Analyst



Presentation Overview

- Certificate holder, facility, and facility location
- Requested Amendments
- Procedural history
- Summary of Proposed Order

Port Westward Generating Project

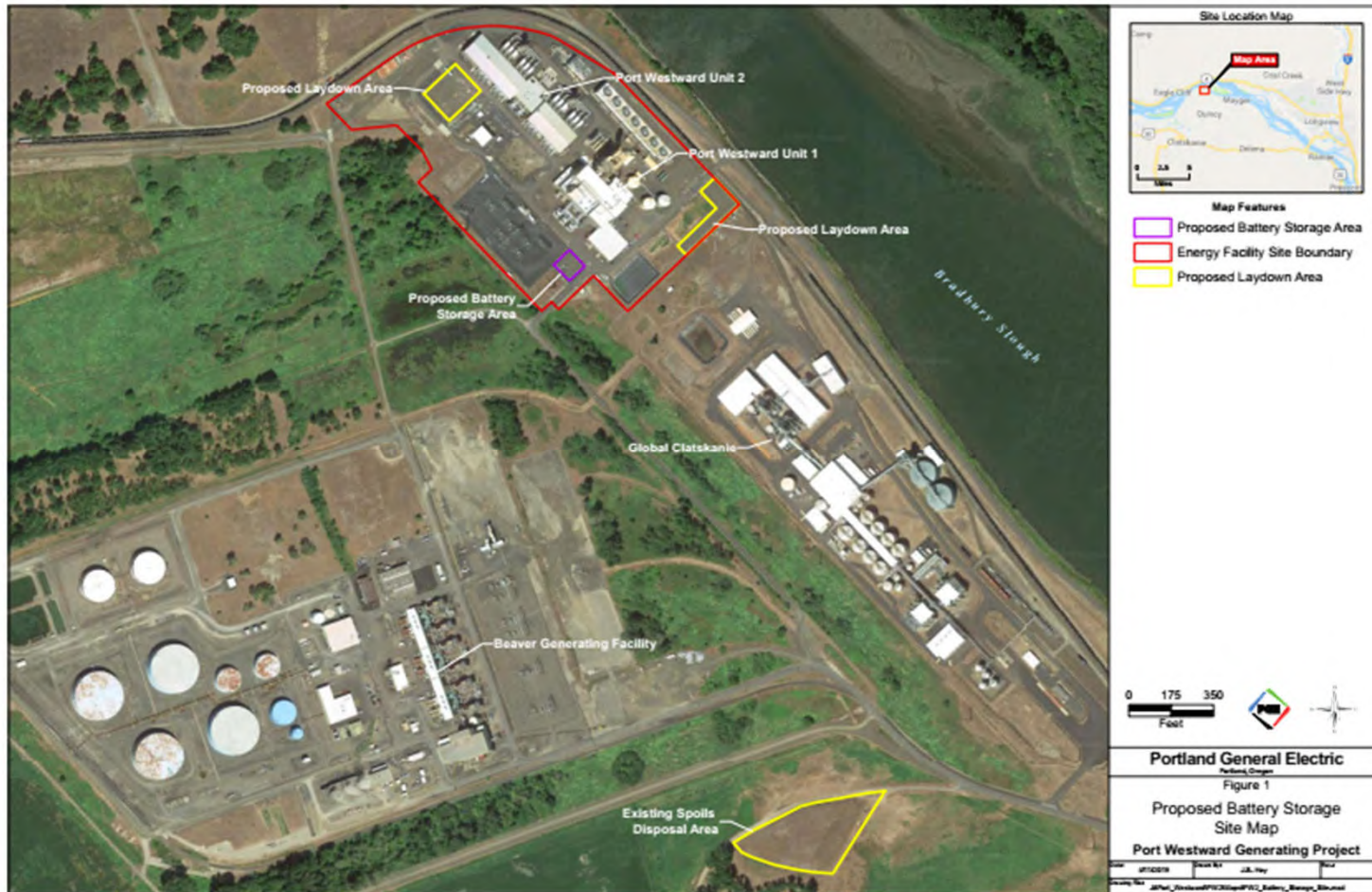


- **Certificate Holder:** Portland General Electric Company
- **Type of Facility:** 650 MW natural gas-fired power plant comprised of one 411 MW base load combined cycle generating plant, one 220 MW non-base load generating plant, and related or supporting facilities
- **Facility Location:** Port Westward Industrial Park; Columbia County
- **Status:** Operating

Requested Amendments

- Request for Amendment 11 seeks authorization to:
 - Construct and operate a 4-6 MW Battery Energy Storage System (BESS) within the existing energy facility site boundary.
 - Make administrative corrections to the facility description.
 - Allow use of secondary spill containment options that do not require installation of permanent pavement.
 - Modify revegetation success criteria and move revegetation conditions from site certificate to a Revegetation and Noxious Weed Control Plan.
 - Modify a condition related to wetland buffers.
 - Remove a condition related to bald eagles.
- Request for Amendment 11 does not proposed to change the site boundary, or the design and layout of existing facilities.

Requested Amendments



Requested Amendments



Procedural History

Requirement	Responsible Party	Date
Preliminary Request for Amendment 11	Certificate Holder	April 23, 2019
Complete Request for Amendment 11	Certificate Holder	July 12, 2019
Draft Proposed Order Issued	ODOE	August 29, 2019
Comment Period (28 days)	ODOE	August 29 – September 26, 2019
Public Hearing (Today)	EFSC	September 26, 2019
Council Review of Draft Proposed Order	EFSC	September 27, 2019
Proposed Order and Notice of Contested Case Issued	ODOE	October 3, 2019
Final Order/Amended Site Certificate	EFSC	November 22, 2019

Summary of Proposed Order

- Comments incorporated from:
 - Columbia County (Special Advisory Group)
 - Oregon Department of Fish and Wildlife
- Scope of Council's Review:
 - Does the facility, with the proposed change, comply with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change?
 - Is the amount of the bond or letter of credit adequate?
- Staff recommendation
 - Staff recommends Council find the facility, with the proposed changes, would comply with applicable laws and standards based on compliance with existing and proposed conditions.

Agenda Item J (Action Item)

Wheatridge Wind Energy Facility Request for Amendment 4

November 22, 2019

Maxwell Woods, Senior Policy Advisor
Sarah Esterson, Senior Siting Analyst



Agenda Item K (Action Item)

Perennial Wind Chaser Station Request for Amendment 1

November 22, 2019

Katie Clifford, Senior Siting Analyst



Agenda Item L (Action Item)

2020-2022 Rulemaking Schedule Update

November 22, 2019

Christopher M. Clark, Rules Coordinator



Rulemaking Basics

- A “rule” is 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.* * *” OAR 183.310(9),
- An agency must adopt rules to:
 - Meet a statutory requirement
 - Interpret broad statutory authority delegated by the legislature
 - Amend, suspend or repeal existing rules

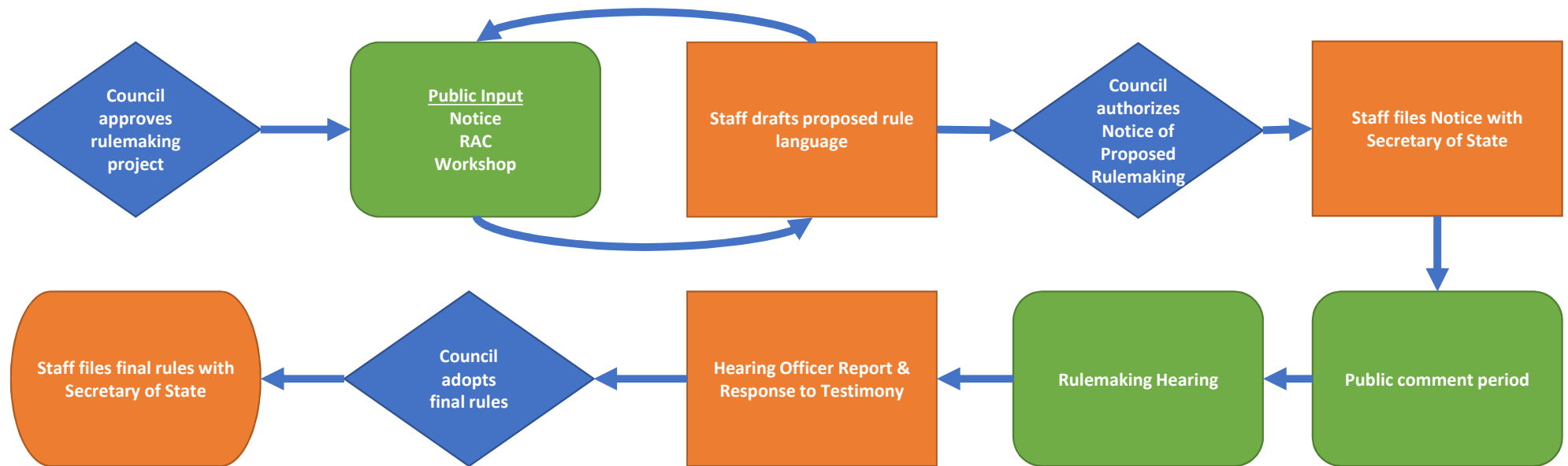
What is Council's rulemaking authority?

- **ORS 469.470(2):** The Energy Facility Siting Council shall * * *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.
- Other specific authority found in ORS 469.480; 469.503; 469.556; 469.605; 469.607; 469.613.

Public involvement in the rulemaking process (ORS 183.333(1))

- Statute encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule.
- Public input may be obtained by:
 - Appointing a rules advisory committee that represents the interests of persons likely to be affected by the rule, or use
 - Any other means of obtaining public views (i.e. Requests for written advice, workshops, etc.)

EFSC rulemaking process



Status of 2019 rulemaking priorities

Project ID	Subject Matter	Status
N/A	Statutory Minor Corrections	Complete.
R183	Single Solar PV Facilities	In progress.
R191	Trojan ISFSI Compliance (NEW)	In progress.
R192	Administrative Housekeeping	Complete.
R182	General Compliance	On hold.
R184	Scenic Resources, Protected Areas, & Property Owner Notification	Partially Complete.
R185	Exemptions from Site Certificate	On hold.
R193	Noise Standard	On hold.
R194	Historic, Cultural and Archaeological Resources	On hold.
R196*	Amendments 2019	In Progress.
*Added after approval of 2019 Rulemaking Schedule		

Recommended 2020 Rulemaking Priorities

	Project ID	Subject Matter	Method for Obtaining Advice
In Progress	R183	Solar PV Facilities	RAC
	R191	Trojan ISFSI Compliance (NEW)	Request for Written Advice
	R196	Amendments 2019	Request for Written Advice
2020	R184	Protected Areas, Recreation, & Scenic Resources	RAC
	R183	General Compliance	RAC
	R201	Geospatial Resources (NEW)	RAC
	R202	Research Reactors (NEW)	Request for Written Advice
	R203	Carbon Offset Rate Update (NEW)	Fiscal Advisory Committee
2020-2021	R185	Exemptions from Site Certificate	RAC
	R193	Noise Standard	RAC
	R194	Historic, Cultural and Archaeological Resources	RAC or Public Workshop
	R195	Radioactive Waste Materials	RAC
2021-2022	R204	2022 Amendment Rulemaking (NEW)	RAC
	R205	Mandatory Conditions in Site Certificates (NEW)	RAC
2022 or Later	TBD	Application Process Review	RAC

Agenda Item M (Action Item)

Blue Marmot Solar Energy Facility: Notice of Intent Extension Request

November 22, 2019

Maxwell Woods, Senior Policy Advisor



Adjourn

