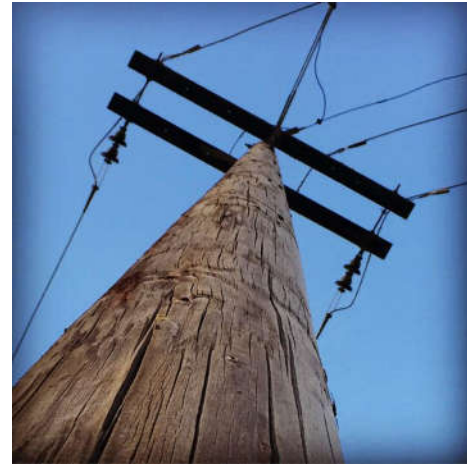


# Oregon Department of **ENERGY**

Energy Facility Siting  
Council Meeting

Best Western Plus Inn  
Hood River, Oregon

January 23-24, 2020



# 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)

## Pre-Approved Financial Institutions List Update

January 23, 2020

Maxwell Woods, Senior Policy Advisor



# Agenda Item C.1 (Part 1 of 2 - Information Item)

## **Boardman to Hemingway Transmission Line - Council Review of Draft Proposed Order and Public Comments**

January 23, 2020

Kellen Tardaewether – Senior Siting Analyst

Sarah Esterson – Senior Siting Analyst

Maxwell Woods – Senior Policy Advisor



# Council Scope of Review

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## OAR 345-015-0230

- Review DPO, DPO Comments by issue/standard, Applicant's response to issues raised; Department recommendations
- Provide comments for Department consideration in proposed order
  - Provide comments individually, consensus or vote at EFSC meeting
  - Provide comments by issue or standard as staff presents



# Council Review of DPO/Comments

## **Section IV.F. Protected Areas: OAR 345-022-0040**

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below...

\*\*\*

(2) Notwithstanding section (1), the Council may issue a site certificate for a transmission line or a natural gas pipeline or for a facility located outside a protected area that includes a transmission line or natural gas or water pipeline as a related or supporting facility located in a protected area identified in section (1), if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1)...

(3) The provisions of section (1) do not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher or containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.



*See DPO Section IV.F. Protected Areas, (Page 229)*

# Council Review of DPO/Comments

## Section IV.F. Protected Areas: OAR 345-022-0040

**Table PA-1: Protected Areas within Analysis Area and Distance from Proposed and Alternative Transmission Line Routes**

Protected Areas	Protected Area Category	County	Proposed Route		Alternative Route	
			Distance	Direction	Distance	Direction
Blue Mountain Forest State Scenic Corridor	State Parks and Waysides	Umatilla, Union	0 mi		3.7 mi	NW
Ladd Marsh WA/SNHA	State Wildlife Areas and Management Areas	Union	0 mi		208.3 ft	E
Oregon Trail ACEC - NHOTIC Parcel	BLM ACECs	Baker	123.4 ft	NE	-	-
Owyhee River Below the Dam ACEC	BLM ACECs	Malheur	249 ft	SW	7.6 mi	SE
Oregon Trail ACEC - Straw Ranch 1 Parcel	BLM ACECs	Baker	0.1 mi	SW	-	-
Oregon Trail ACEC - Birch Creek parcel	BLM ACECs	Malheur	0.2 mi	SW	-	-
Hilgard Junction State Recreation Area	State Parks and Waysides	Union	0.3 mi	E	0.4 mi	N
Deer Flat National Wildlife Refuge (including Snake River Island Units)	National and State Wildlife Refuge	Malheur	0.4 mi	E	12.2 mi	E
Oregon Trail ACEC - Tub Mountain Parcel	BLM ACECs	Malheur	0.5 mi	W	17.2 mi	N
Columbia Basin - Coyote Springs WA	State Wildlife Areas and Management Areas	Morrow	0.5 mi	W	8.9 mi	N
Farewell Bend State Recreation Area	State Parks and Waysides	Baker	0.7 mi	NE	-	-
Oregon Trail ACEC - Blue Mountain Parcel	BLM ACECs	Union	0.9 mi	NE	6.7 mi	NW
Oregon Trail ACEC - Straw Ranch 2 Parcel	BLM ACECs	Baker	1.1 mi	NE	-	-

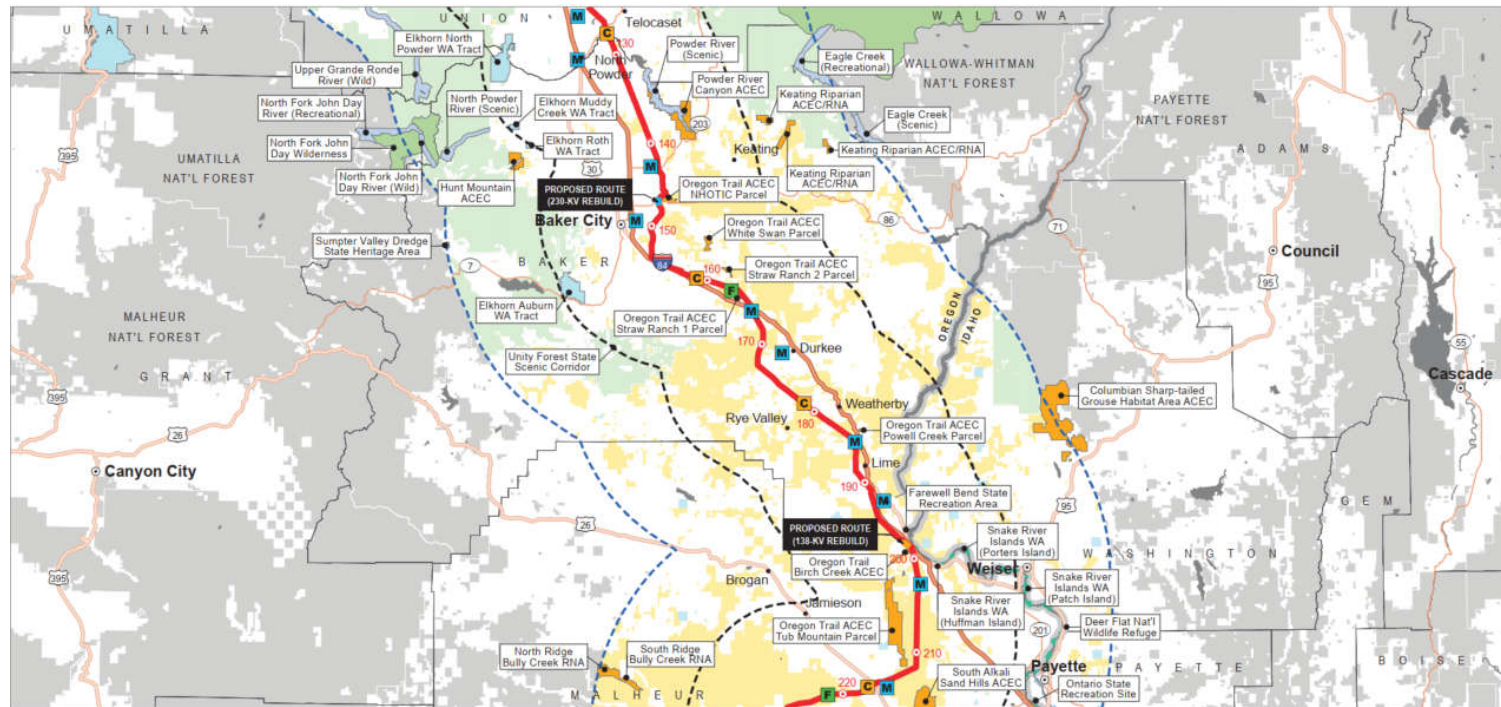
- 74 Protected Areas identified in the analysis area (20 miles)



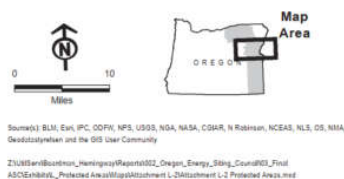
See DPO Table PA-1, Section IV.F. Protected Areas (Page 239)

# Council Review of DPO/Comments

## Section IV.F. Protected Areas: OAR 345-022-0040



See ASC Exhibit L  
(Page 119/338)



Boardman to Hemingway Transmission Line Project  
Application for Site Certificate

**Attachment L-2  
Protected Areas**  
Proposed and Alternative Routes

Map 2

# Council Review of DPO/Comments

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## **Section IV.F. Protected Areas: OAR 345-022-0040**

- Noise
  - Construction
  - Operation
- Traffic
  - Construction
  - Operation
- Water Use and Wastewater Disposal



*See DPO Section IV.F. Protected Areas (Page 241-245)*

# Council Review of DPO/Comments

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## Section IV.F. Protected Areas: OAR 345-022-0040

### Protected Areas Crossed:

#### *Ladd Marsh Wildlife Area/State Natural Heritage Area (SNHA)*

- **Recommended Protected Areas Condition 1:**

- a. Coordinate construction activities in Ladd Marsh Wildlife Area with the Wildlife Area manager
- b. Provide evidence to ODFW of Section 106 NRHP compliance for the proposed facility

- **Recommended Protected Areas Condition 2:**

- ...if the Morgan Lake alternative route is selected, the certificate holder shall ensure that facility components are not sited within the boundary of the Ladd Marsh Wildlife Area...

*See DPO Section IV., Protected Areas (Page 240)*



# Council Review of DPO/Comments

## Section IV.F. Protected Areas: OAR 345-022-0040

- Visual Impacts:  
Methodology

*See DPO Section IV.F.5,  
Potential Visual Impacts from Facility  
Structures (Page 247)*

- (1) Evaluation of baseline conditions, which involved collecting information related to:
  - a. Scenic Quality and Attractiveness. The characteristic is assigned a score or ranking, based on the BLM and USFS methods.
  - b. Landscape Character. This is a USFS system. The BLM does not use a “landscape character” classification, so this information was assessed for all protected areas based on the USFS system.
  - c. Viewer groups and characteristics.
- (2) Impact likelihood and assessment, which involved the following assessment criteria:
  - a. Likelihood of impact;
  - b. Magnitude of impact – duration;
  - c. Magnitude of impact – visual contrast and scale domination; and
  - d. Magnitude of impact – resource change and viewer perception.
- (3) Consideration of intensity, causation, and context (based upon Council’s definition of “significant” OAR 345-001-0010(53)).
  - a. Impact intensity
  - b. Degree to which the possible impacts are caused by the proposed action
  - c. Context
  - d. Potential significance. “significance” was determined based on if the valued scenic attributes of the protected area could persist, or not, based on the proposed facility’s potential impact.

# Council Review of DPO/Comments

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## Section IV.F. Protected Areas: OAR 345-022-0040

### Oregon Historic Trail ACEC - National Historic Oregon Trail Interpretive Center Parcel (NHOTIC)

- Proposed facility would be located within one mile of the NHOTIC main building and within 130 feet of the western boundary of the NHOTIC Parcel
- **Scenic Resources Condition 2:** Height restricted, H-frame structures with natina finish



# Council Review of DPO/Comments

## Section IV.F. Protected Areas: OAR 345-022-0040 (NHOTIC)



Above photograph is intended to be viewed 18 inches from viewer's eyes when printed on 11x17 paper. The photograph below has been cropped to show a wide angle of view with the above photograph's area shown in yellow.



The above photograph is intended to be viewed at approximately 18 inches from the viewer's eyes when printed on 11x17 paper. The photograph below is the full sized wide angle view of the above photograph area outlined in yellow.





# Council Review of DPO/Comments

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## **Section IV.J. Scenic Resources: OAR 345-022-0080**

- (1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

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# Council Review of DPO/Comments

## Section IV.J. Scenic Resources: OAR 345-022-0080

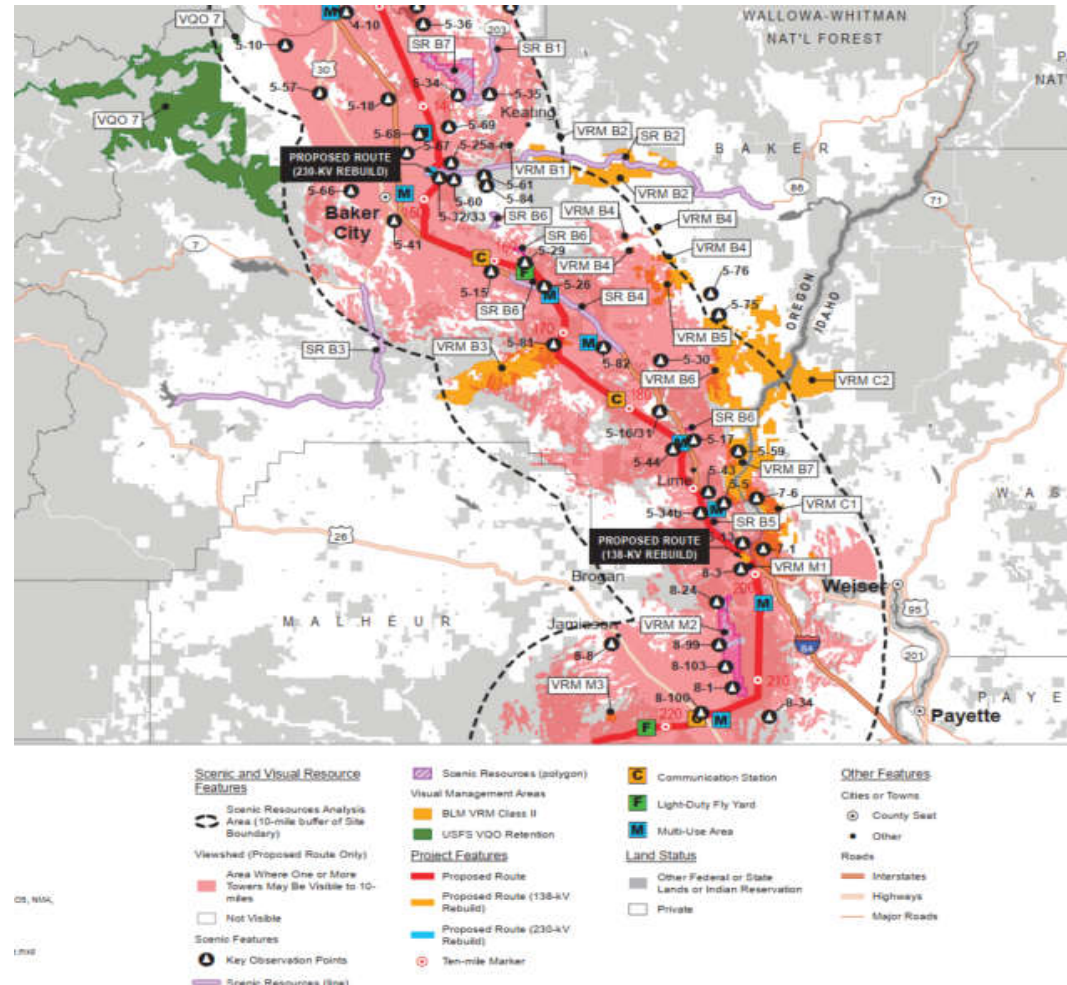
- History of Siting and Mitigation Considerations
  - (1) Evaluation of baseline conditions, which involved collecting information related to:
    - a. Scenic Quality and Attractiveness. The characteristic is assigned a score or ranking, based on the BLM and USFS methods.
    - b. Landscape Character. This is a USFS system. The BLM does not use a “landscape character” classification, so this information was assessed for all protected areas based on the USFS system.
    - c. Viewer groups and characteristics.
  - (2) Impact likelihood and assessment, which involved the following assessment criteria:
    - a. Likelihood of impact;
    - b. Magnitude of impact – duration;
    - c. Magnitude of impact – visual contrast and scale domination; and
    - d. Magnitude of impact – resource change and viewer perception.
  - (3) Consideration of intensity, causation, and context (based upon Council’s definition of “significant” OAR 345-001-0010(53)).
    - a. Impact intensity
    - b. Degree to which the possible impacts are caused by the proposed action
    - c. Context
    - d. Potential significance. “significance” was determined based on if the valued scenic attributes of the protected area could persist, or not, based on the proposed facility’s potential impact.

# Council Review of DPO/Comments

## Section IV.J. Scenic Resources: OAR 345-022-0080

- Viewshed Maps

*See ASC Exhibit R Section (Page 561/570)*



# Council Review of DPO/Comments

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## **Section IV.J. Scenic Resources: OAR 345-022-0080**

Oregon Trail ACEC – National Historic Oregon Trail Interpretative Center, (NHOTIC) Parcel

- **Recommended Scenic Resources Condition 2:** National Historic Oregon Trail Interpretative Center, the certificate holder shall construct the facility using tower structures that meet the following criteria between approximately Milepost 145.1 and Milepost 146.6:
  - H-frames;
  - Tower height no greater than 130 feet; and
  - Weathered steel (or an equivalent coating)

# Council Review of DPO/Comments

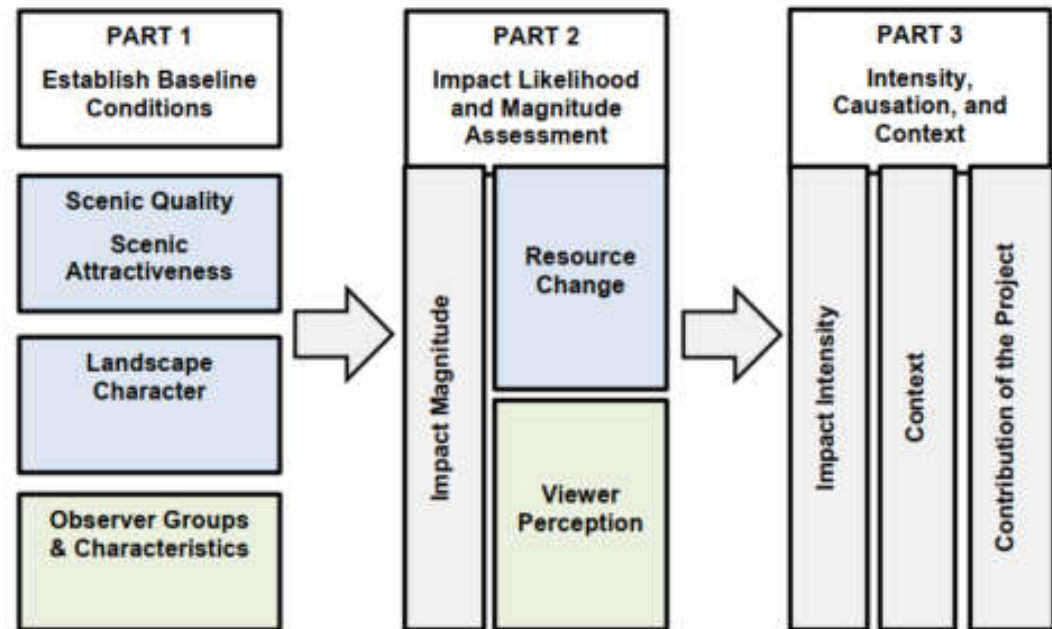
## Section IV.J. Scenic Resources: OAR 345-022-0080

- **State Scenic Byways:**

- Grande Tour Route
- Hells Canyon Scenic Byway All-American Road
- Journey through Time Scenic Byway
- Blue Mountain Scenic Byway
- Elkhorn Drive Scenic Byway

*See DPO Section IV.J, Scenic Resources (Page 347)*

The methods used to evaluate Project impacts on scenic resources, and to determine the significance of Project impacts to scenic resources are described in a series of three parts, below. These steps are illustrated in Figure R-1-1.



# Council Review of DPO/Comments

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## **Section IV.L. Recreation: OAR 345-022-0100**

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

- (a) Any special designation or management of the location;
- (b) The degree of demand;
- (c) Outstanding or unusual qualities;
- (d) Availability or rareness;
- (e) Irreplaceability or irretrievability of the opportunity.

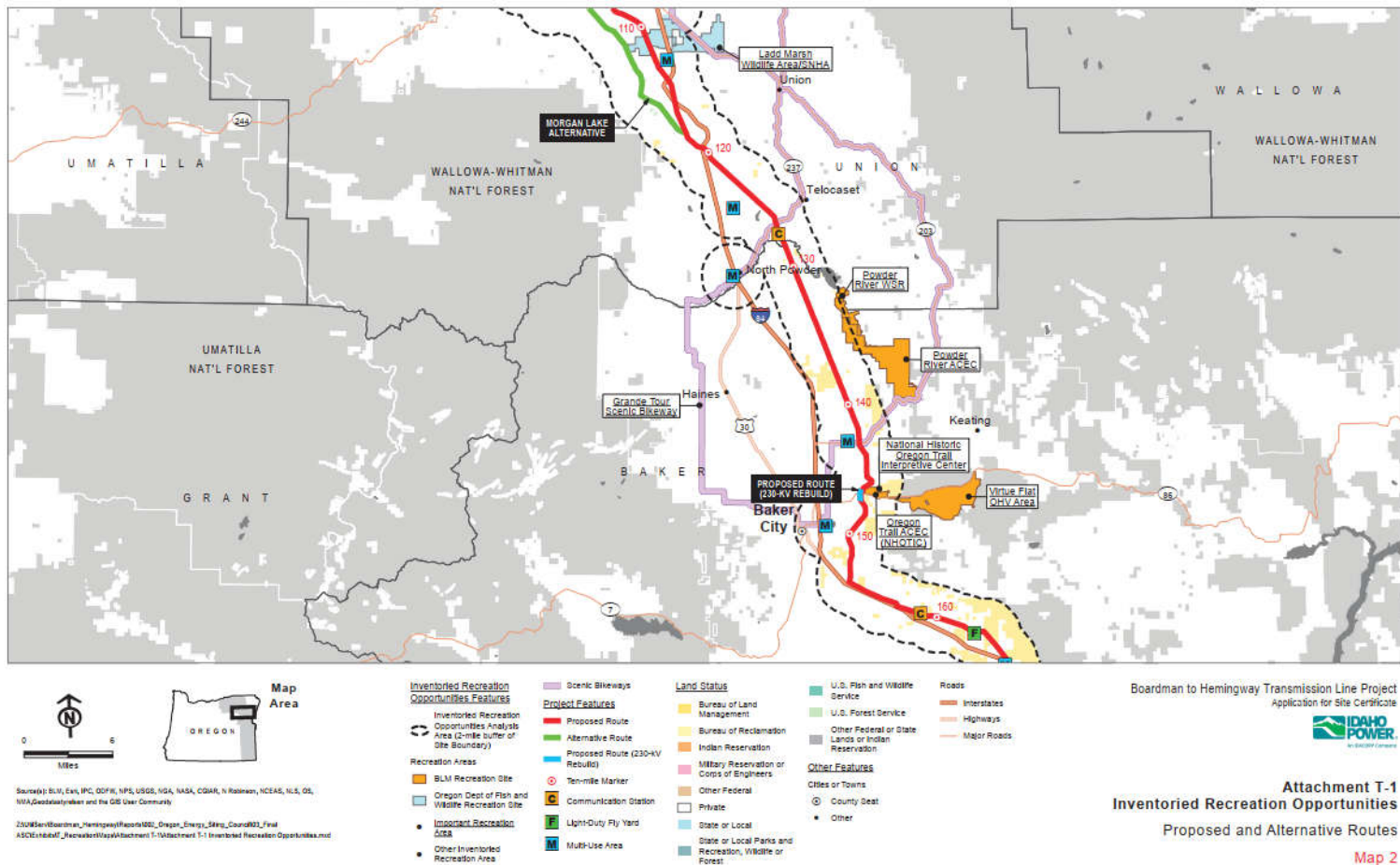
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# Council Review of DPO/Comments

## Section IV.L. Recreation: OAR 345-022-0100

See ASC Exhibit T  
(Page 81/291)

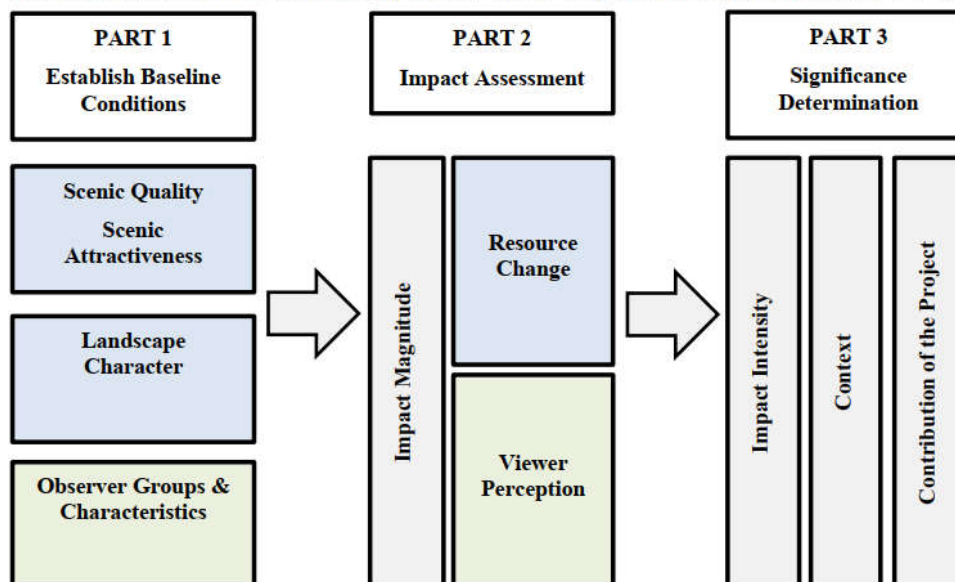


# Council Review of DPO/Comments

## Section IV.L. Recreation: OAR 345-022-0100

- Potential Noise Impacts
  - Construction
  - Operation
- Potential Traffic Impacts
  - Construction
- **Potential Visual Impacts**

The methods used to evaluate Project impacts on the scenic attributes of important recreation opportunities, and to determine the significance of Project impacts to those scenic attributes, are described in a series of three parts, below. These steps are illustrated in Figure T-4-1.



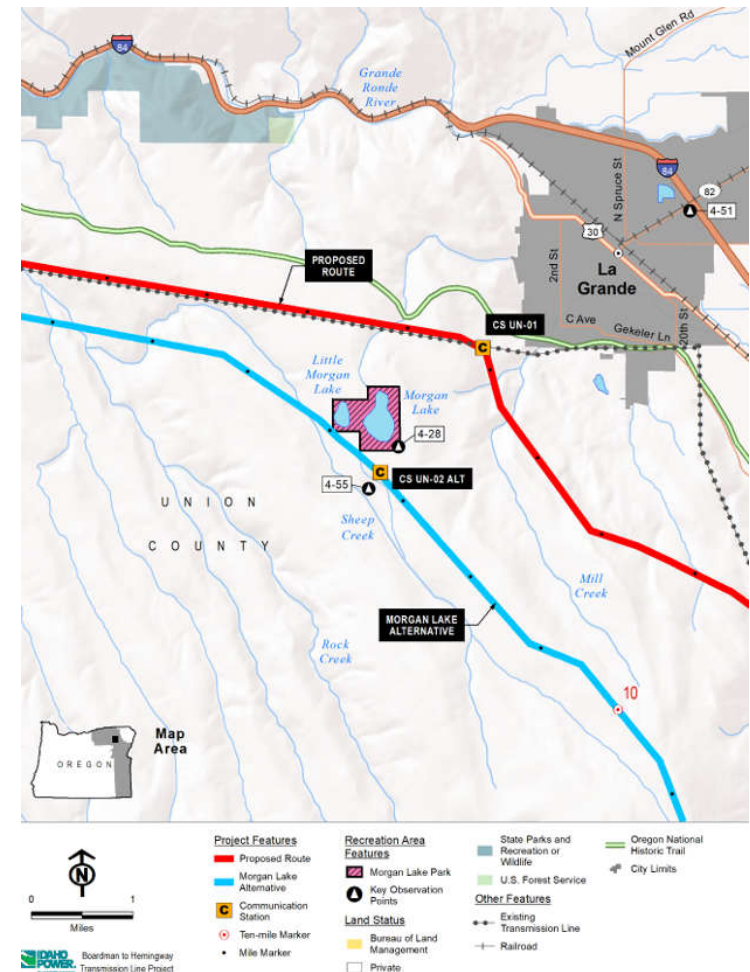
*See DPO Section IV.L. Recreation, (Page 467-470)  
Figure See ASC Exhibit T (Page 105/291)*



# Council Review of DPO/Comments

## Section IV.L. Recreation: OAR 345-022-0100

- **Morgan Lake Park**
  - Proposed Route
  - Morgan Lake Alternative
    - Recreation Condition 1: H-frames; Tower height no greater than 130 feet; and Weathered steel (or an equivalent coating)

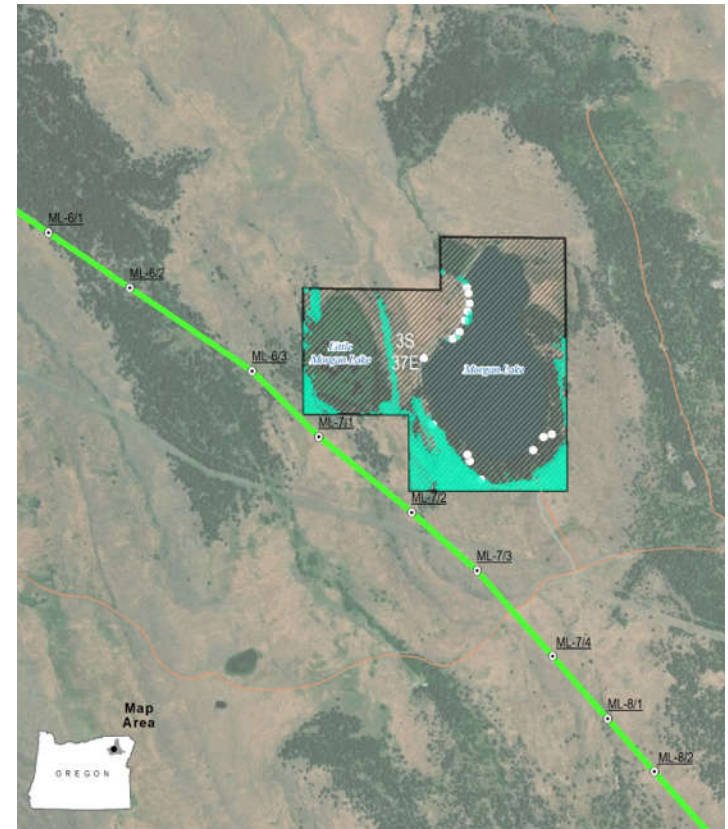


*See DPO Section IV.L.4. Potential Visual Impacts  
(Page 474,477)*

# Council Review of DPO/Comments

## Section IV.L. Recreation: OAR 345-022-0100

- **Morgan Lake Park**
  - Morgan Lake Alternative
    - Noise and Visual Impacts
- Applicant responses (including modified condition language)



*See DPO Section IV.L.4. Potential Visual Impacts  
(Page 474,477)*

# Council Review of DPO/Comments

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## **Section IV.G. Retirement and Financial Assurance: OAR 345-022-0050**

To issue a site certificate, the Council must find that:

- (1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.
- (2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.



*See DPO Section IV.G. Retirement and Financial Assurance (Page 263)*

# Council Review of DPO/Comments

## Section IV.G. Retirement and Financial Assurance: OAR 345-022-0050

- Mandatory Conditions (Retirement and Financial Assurance Condition 1-3)
- Estimated Cost of Site Restoration

*See Table RFA-1 and DPO Section IV.G,  
Retirement and Financial Assurance (Page  
266 and 270)*

Table RFA-1: Applicant's Decommissioning and Site Restoration Cost Estimate

<b>General Costs</b>	
A. PERMITS	\$49,183
B. MOBILIZATION	\$5,226,223
C. ENGINEERING	\$188,799
D. PROJECT OVERHEAD	\$1,739,946
E. HAZARDOUS MATERIALS INSPECTIONS	\$60,000
F. PROTECTION	\$173,320
<b>General Costs Subtotal</b>	<b>\$7,437,471</b>
<b>Site Construction</b>	
A. UTILITY DISCONNECTS	\$64,692
B. PRELIMINARY WORK	\$71,100
C. SITE GRADING	\$10,698,452
C. UNDERGROUND UTILITY REMOVAL	\$41,212
<b>Site Construction Subtotal</b>	<b>\$10,875,456</b>
<b>Concrete Wrecking</b>	
A. REINFORCED CONCRETE	\$3,791,302
B. NON-REINFORCED CONCRETE	\$0
<b>Concrete Wrecking Subtotal</b>	<b>\$3,791,302</b>
<b>Building Wrecking</b>	<b>\$95,337</b>
<b>Steel Wrecking</b>	<b>\$59,658,800</b>
<b>Timber Wrecking</b>	<b>\$0</b>
<b>Equipment Wrecking</b>	<b>\$22,062,320</b>
<b>Load &amp; Haul</b>	<b>\$5,830,000</b>
<b>Costs Subtotal</b>	<b>\$109,750,686</b>
<b>Specialty Contracts (subcontracted work)</b>	<b>\$485,400</b>
<b>Subtotal</b>	<b>\$110,236,086</b>
<b>Subtotal Adjusted to Current Dollars</b>	<b>\$112,407,253</b>
Performance Bond @ 1%	\$1,124,073
<b>Gross Cost (Adjusted)</b>	<b>\$113,531,326</b>
Administration and Project Management @ 4%	\$4,541,253
Future Developments Contingency @ 20%	\$22,706,265
Hazardous Materials Management Contingency	\$0
<b>Total Site Restoration Cost (Q3 2016 dollars)</b>	<b>\$140,778,844</b>
<b>Total Site Restoration Cost (rounded to nearest \$1,000)</b>	<b>\$140,779,000</b>



# Council Review of DPO/Comments

## Section IV.G. Retirement and Financial Assurance: OAR 345-022-0050

- Ability of the Applicant to Obtain a Bond or Letter of Credit (Retirement and Financial Assurance Condition 4 and 5)



Corporate Banking Group  
Energy Power & Utilities  
505 7th Street  
Minneapolis, MN 55402  
wellsfargo.com

August 14, 2018

Mr. Steven R. Keen  
Idaho Power Company  
1221 W. Idaho Street  
Boise, Idaho 83702

Re: Boardman-to-Hemingway Transmission Project – Financial Assurance Requirements Under  
EPSC Process

Mr. Keen:

Wells Fargo Bank, National Association ("Wells Fargo Bank" and together with its affiliates, "Wells Fargo") has a long standing business relationship with Idaho Power Company ("Idaho Power"). Wells Fargo has acted as a joint book-runner for Idaho Power in the arrangement of senior secured debt and participated as a lender to Idaho Power under various credit agreements, including Idaho Power's current \$300 million syndicated credit agreement, under which Wells Fargo Bank also acts as the administrative agent on behalf of all the lenders under the credit facility.

Based upon Idaho Power's current credit ratings, profile, and information we have as of the date hereof, and subject to acceptable pricing, terms, and requisite internal approvals, and assuming no market disruption, Wells Fargo confirms to you that it would be highly interested in arranging (as administrative agent under the existing credit facility or otherwise), and believes it would be successful at arranging, a syndicated letter of credit in an amount up to \$141 million for a period not to exceed three years (the "LC Facility") for the purpose of ensuring Idaho Power's obligation that the site of the Boardman-to-Hemingway transmission project be restored to a useful and non-hazardous condition.

This letter is for informational purposes only. This letter does not constitute or give rise to (i) any legal obligation on the Wells Fargo, or any of its affiliates, to arrange, underwrite or provide, or commit to arrange, underwrite or provide, the LC Facility or any other financings; or (ii) any representation or warranties in respect of any of the foregoing. In addition, such obligations or liabilities would arise only under separate written agreements in form and substance satisfactory to Wells Fargo in its sole discretion.

This letter shall be governed by and construed in accordance with New York law.

Should you have any questions or require any clarification, please do not hesitate to contact any of the Wells Fargo Team.

Sincerely,

Wells Fargo Bank, National Association

Wells Fargo Securities, LLC



*See Table RFA-1 and DPO Section IV.G, Retirement and Financial Assurance (Page 266 and 270)*

# Agenda Item C.2 (Part 2 of 2 - Information Item)

## **Boardman to Hemingway Transmission Line - Council Review of Draft Proposed Order and Public Comments**

January 24, 2020

Kellen Tardaewether – Senior Siting Analyst

Sarah Esterson – Senior Siting Analyst

Maxwell Woods – Senior Policy Advisor



# Council Review of DPO/Comments

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## **Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060**

### ***Fish and Wildlife Habitat Standard***

1. Consistency with ODFW Fish and Wildlife Habitat Mitigation Policy
2. Consistency with Greater Sage Grouse Conservation Strategy rules

Exhibit P1: Fish and Wildlife Habitat, P2: Sage-Grouse, P3: Elk

Extensive surveys:

- GIS/Desktop/Database review
- Field surveys: 2011, 2012, 2013, 2014, and 2016
- Habitat categorization and special-status species surveys
- Site access restrictions



*See DPO Section IV.H, Fish and Wildlife Habitat (Page 275)*



# Council Review of DPO/Comments

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## **Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060**

- All six habitat categories present in analysis area
- No impact to Category 1 habitat
- Indirect impacts: elk, sage grouse
- Compliance pathway:
  - Pre-construction surveys (F&W Conditions 15 and 16)
  - Finalization and implementation of management plans (F&W Conditions 1, 2, 3, 4, 17)
  - Compensatory mitigation (HMP)
  - Other recommended conditions
- Sage grouse habitat utilizes different system



*See DPO Section IV.H, Fish and Wildlife Habitat (Page 275)*



# Council Review of DPO/Comments

## Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060

- Public and ODFW Comments
- Management Plans:
  - Reclamation and Revegetation Plan
  - Noxious Weed Plan
  - Fish and Wildlife Habitat Mitigation Plan
  - Greater Sage-Grouse Habitat Mitigation Plan
  - Avian Protection Plan

Noxious Weed Plan

Boardman to Hemingway Transmission  
Line Project



Reclamation and Revegetation Plan

Boardman to Hemingway Transmission  
Line Project



1221 West Idaho Street  
Boise, Idaho 83702

September 2018



*See DPO Section IV.H, Fish and Wildlife Habitat (Attachment P1-5)*

# Council Review of DPO/Comments

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## **Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060**

- Habitat Mitigation Plan (compensatory mitigation)
  - Mitigation Banking/In-lieu fee (not currently available)
  - Applicant-directed compensatory mitigation projects
    - Extensive assessment of potential comp mitigation project areas
- Certain other recommended conditions
  - Access control on roads (locked gates) (F&W Condition 9)
  - Seasonal construction limitations (raptor nests, big game) (F&W Conditions 14 and 11)
  - Pre- and post-construction traffic studies in elk, sage grouse habitats (F&W Conditions 21 and 22)



*See Habitat Mitigation Plan, DPO Attachment P1-6*  
*See Site Certificate Conditions, DPO Attachment 1*

# Council Review of DPO/Comments

## Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060

### *Greater sage-grouse habitat*

- Subject to ODFW and LCDC sage grouse conservation plan rules
  - Extensive planning and routing to avoid sage grouse habitat
- Compensatory mitigation calculated via the ODFW Habitat Quantification Tool
- LCDC “metering” rule and “disturbance threshold” rule



*See DPO Section IV.H, Fish and Wildlife Habitat (Page 309)*

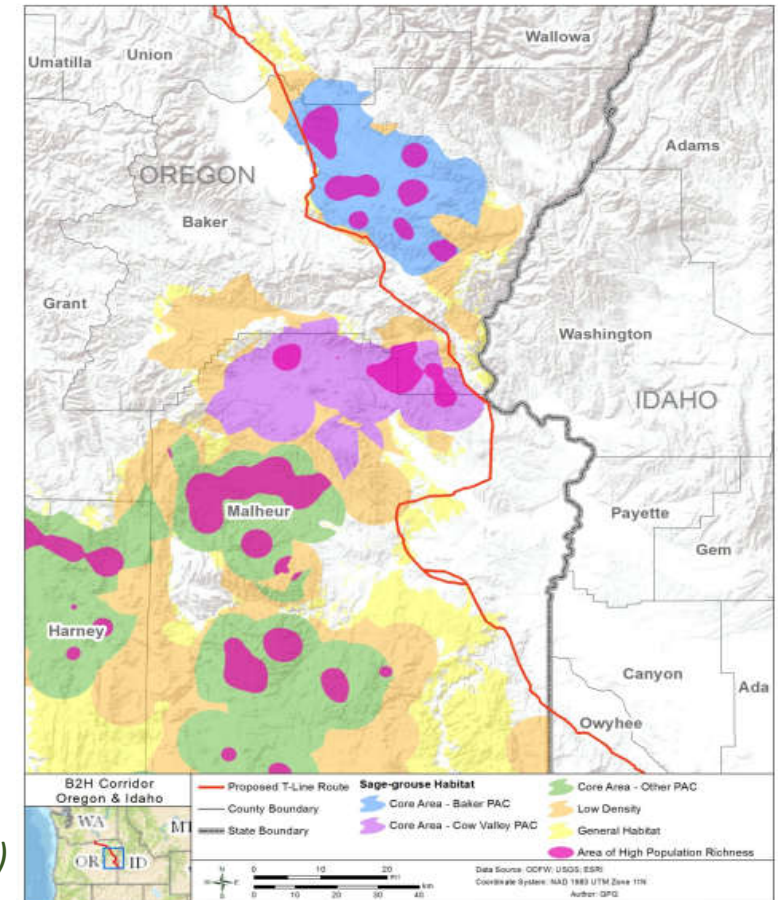


Figure P2-2. Sage-Grouse Habitat Near the Project in Oregon

# Council Review of DPO/Comments

## **Section IV.I. Threatened and Endangered Species: OAR 345-022-0070**

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:  
(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

- (a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or
- (b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.



*See DPO Section IV.I, Threatened and Endangered Species (Page 327)*

# Council Review of DPO/Comments

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## **Section IV.I. Threatened and Endangered Species: OAR 345-022-0070**

- Extensive desktop/database and field surveys
- Site access restrictions

### **Potential habitat/individuals in analysis area**

- Mammals: Washington Ground Squirrel, Wolverine
- Fish: Snake River Spring/Summer Chinook Salmon (Grande Ronde River)
- Plants: eight species



*See DPO Section IV.I, Threatened and Endangered Species (Page 331, Table TE-2)*

# Council Review of DPO/Comments

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## Section IV.I. Threatened and Endangered Species: OAR 345-022-0070

### Mammals:

#### *Wolverine*

- None identified, no historic document occurrences. Potential habitat impacts.

#### *Washington Ground Squirrel*

- Individuals and habitat present.
- Category 1 and 2 habitat.
- Pre-construction surveys and avoidance requirement (T&E Condition 1)



*See DPO Section IV.I, Threatened and Endangered Species (Page 333)*

# Council Review of DPO/Comments

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## **Section IV.I. Threatened and Endangered Species: OAR 345-022-0070**

### **Fish:**

- Snake River Spring/Summer Chinook Salmon (Grande Ronde River)
- Potential habitat impacts, temporary and permanent
- No facility components proposed in Grande Ronde River



*See DPO Section IV.I, Threatened and Endangered Species (Page 336)*

# Council Review of DPO/Comments

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## **Section IV.I. Threatened and Endangered Species: OAR 345-022-0070**

### **Plants:**

- Eight species identified as potentially occurring in analysis area; field surveys and database review narrowed list to seven species either likely to occur or with potential habitat in analysis area.
- Potential direct impact
- Pre-construction field surveys
- Avoid and minimize potential impact via micrositeing (T&E Condition 2)



# Council Review of DPO/Comments

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## **Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090**

- (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:
- (a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;
  - (b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in 358.905(1)(c); and
  - (c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

\*\*\*

*See DPO Section IV.K. Historic, Cultural, and Archaeological Resources (Page 378)*

# Council Review of DPO/Comments

## Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090

- Aligning EFSC and Section 106 Review: ORS 469.370(13)
  - Resource designation of “unevaluated”

**Table HCA-5: Potentially Impacted Resources under OAR 345-022-0090(1)(a)**

Temporary Resource #: Ped. Survey/Visual Assessment OR Assigned Trinomial	County	Generalized Resource Description/ Resource Type	NRHP Recommendation	Project Route(s)	Project Component	Land ownership	Applicable EFSC Standard	Project Impacts and Management Comments
Segment 4B2H-EK-26/ OWR&N Roundhouse and OWR&N/OSL Joint Railyard	Baker	Railroad Segment & Structure/ Historic Archaeological Site	Unevaluated (Criterion D); Not Eligible (Criteria A, B, and C)	Proposed Route	Direct Analysis Area (Construction Footprint); Visual Assessment analysis area	PV	a) Potential Historic Property; b) Archaeological site on private land	Potential direct/indirect impact. Avoid direct impact until eligibility determined. Testing Needed.
6B2H-SA-12	Baker	Homestead / Historic Archaeological Site	Unevaluated (Criteria A, B, and D); Not Eligible (Criterion C)	Proposed Route	Direct Analysis Area (Construction Footprint)	PV	a) Potential Historic Property; b) Archaeological site on private land	Potential direct/indirect impact. Avoid direct impact until eligibility determined. Testing Needed.
6B2H-SA-16	Baker	Ranching / Historic Archaeological Site	Unevaluated (Criteria A, B, and D); Not Eligible (Criterion C)	Proposed Route	Direct Analysis Area (Construction Footprint)	PV	a) Potential Historic Property; b) Archaeological site on private land	Potential direct/indirect impact. Avoid direct impact until eligibility determined. Testing Needed.

*See DPO Section IV.K. Historic, Cultural, and Archaeological Resources/Aligning EFSC and Section 106 Review (Page 390)*

# Council Review of DPO/Comments

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## **Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090**

- Methodology and Surveys for Historic, Cultural, and Archaeological Resources
  - Table HCA-1: Historic, Cultural, and Archaeological Resource Studies (DPO Page 384)
- Potential Impacts to Historic, Cultural, and Archaeological Resources
  - Oregon Trail Resources
  - Tribal Resources
  - Other Cultural Resources Potentially Impacted

*See DPO Section IV.K. Historic, Cultural, and Archaeological Resources (Page 390)*

# Council Review of DPO/Comments

## Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090

- National Historic Trail/Oregon Trail Resources
  - Trail/National Historic Trail resources...

Table HCA-2: Oregon Trail/NHT Inventory in Analysis Area with Avoided/No Impacts

Assigned Trinomial or Other ID	Pedestrian Survey or Visual Assessment Temporary Resource #	County	Resource Type and Generalized Resource Description	NRHP Recommendation	Project Route(s)	Project Component	Land Ownership	Avoided Impact	S-9 Errata Avoidance Measure or/and Management Recommendations (HPMP)
35MW00224 (Well Spring, Oregon Trail Site)	N/A	Morrow	Archaeological Site - Homestead & Trail	Listed (Criterion A - Draft MPDF)	Proposed Route, West of Bombing Range Road Alternative 1, West of Bombing Range Road Alternative 2	Visual Assessment analysis area	DOD	Yes	No further management
35MW00227	N/A	Morrow	Archaeological Site - Road	Unevaluated	Proposed Route	Direct Analysis Area (Construction Footprint); Visual Assessment analysis area  Proposed Route: Structure work area; Pulling & tension site; Existing road needing 21-70% modification West of Bombing Range Road Alternatives 1 & 2: No impacts	DOD	Yes	Avoid. Subsurface probing needed. If the Section 106 determination is eligible, applicant will avoid Site # 35MW227 as follows: Proposed Route: For the structure work area and pulling & tension site, applicant will relocate or reduce the size of those areas to avoid Site # 35MW227; for the existing road, all improvements will be made within the existing road prism thereby avoiding any new impacts; applicant will flag any portion of the boundary of Site # 35MW227 that occurs within 100 feet of construction activity. West of Bombing Range Road Alternatives 1 & 2: No avoidance measures are necessary as there are no direct impacts proposed for these alternatives.

Table HCA-3: Oregon Trail/NHT Inventory in Analysis Area with Potential Indirect Impacts

Assigned Trinomial or Other ID	Pedestrian Survey or Visual Assessment Temporary Resource #	County	Resource Type and Generalized Resource Description	NRHP Recommendation	Project Route(s)	Project Component	Land Ownership	Avoided Impact	S-9 Errata Avoidance Measure or/and Management Recommendations (HPMP)
Oregon Trail/ Oregon NHT	N/A	Morrow, Umatilla, Union, Baker, Malheur	Archaeological Site - Trail	Listed (Criterion A)	Proposed Route, Morgan Lake Alternative, West of Bombing Range Road Alternative 1, West of Bombing Range Road Alternative 2	Avoidance measures for Direct Analysis Area (Construction Footprint); Visual Assessment analysis area	BLM, BOR, DOD, FWS, ODOT, PV, STL, STL, STP, USDA, USFS	No - Potential visual impact. Avoidance measures to prevent direct impacts.	Note - Oregon Trail presented in this row as one linear resource; see other rows in table for evaluation of individual segments.  Avoid. Archival research and documentation; Testing needed--Update recordation (if necessary. Off-Site: publish research focus article or professional society presentation, or public education and outreach (e.g., website, kiosk, etc.), rehabilitation of off-site trail segment-- • Recording—including HABS/HAER/HALES • Additional literature or archival review (e.g. historic maps, local papers) • Remote sensing • Purchase of conservation easement or other land protection where trail traces exist • Historic trails restoration within and outside Project area • Public signage, publication/print/media, and/or interpretive plans • Design Modification
Sand Hollow Battleground	SL-MQ-001, SL-MQ-005	Morrow	HPRCST/TCP/Trail	Eligible (Criteria A and B)	Proposed Route, West of Bombing Range Road Alternative 1, West of Bombing Range Road Alternative 2, Proposed Route	Avoidance measures for Direct Analysis Area (Construction Footprint); Visual Assessment analysis area	BLM, DOD, PV	No - Potential visual impact	Note-Sand Hollow Battleground is considered both a TCP/HPRCST and an Oregon Trail-related resource. See also discussion in Tribal Resources Section.  Public Archaeology Funding, Public Interpretation Funding, Consultation-- Update recordation (if necessary. Off-Site: publish research focus article or professional society presentation, or public education and outreach (e.g.,



See DPO Table HCA-2: Oregon Trail/NHT Inventory No Impacts (Page 403)  
 See DPO Table HCA-3: Oregon Trail/NHT Inventory Potential Indirect Impacts (Page 413)  
 Condition (Page 421)

# Council Review of DPO/Comments

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## Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090

- National Historic Trail/Oregon Trail Resources
  - **Recommended Historic, Cultural, and Archaeological Resources Condition 1:**  
...design and locate facility components to avoid direct impacts to Oregon Trail/National Historic Trail resources...

*See DPO Table HCA-2: Oregon Trail/NHT Inventory No Impacts (Page 403)*

*See DPO Table HCA-3: Oregon Trail/NHT Inventory Potential Indirect Impacts (Page 413)  
Condition (Page 421)*



# Council Review of DPO/Comments

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## **Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090**

- Tribal Governments identified by the Legislative Commission on Indian Services (LCIS) that may be affected by the proposed facility
  - Confederated Tribes of the Umatilla Indian Reservation
  - Confederated Tribes of the Warm Springs Indian Reservation of Oregon
  - Burns Paiute Tribe
- Tribal Resources
  - Table HCA-4: Exhibit S Historic Properties of Religious and Cultural Significance to Indian Tribes



*See DPO IV.K.1.2, Tribal Resources (Page 421)  
Condition (Page 460)*



# Council Review of DPO/Comments

## Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090

**Table HCA-7: Potential Minimization and Mitigation of Direct Impacts to Resource Site Types Identified within the Direct Analysis Area\***

Site Type	Potential Minimization/Mitigation Measure
<b>Pre-Contact Sites</b>	
Lithic Scatter, Lithic/Tool Scatter, Quarry, Temporary Camp	Data recovery (controlled excavation), or in-place preservation/protection (capping with clean fill). Off-Site: publish research-focus article or professional society presentation, or public education and outreach (e.g., website, kiosk, etc.).
<b>Multicomponent Sites</b>	
Lithic Scatter/Tool & Refuse Scatter, Ranching Complex, Water Conveyance, Possible Rock Art, Utility Line, Quarry & Refuse Scatter, Temporary Camp	Data recovery (controlled excavation), or in-place preservation/protection (capping with clean fill). Off-Site: publish research-focus article or professional society presentation, or public education and outreach (e.g., website, kiosk, etc.).
<b>Historic-Era Sites</b>	
Agriculture, Bridge, Homestead, Ranching, Logging Railroad, Mining, Railroad and Utility Line, Refuse Scatter, Road, Structure, Survey Marker, Trail Segment, Water Conveyance	Update recordation (if necessary), data recovery (if applicable). Off-Site: publish research focus article or professional society presentation, or public education and outreach (e.g., website, kiosk, etc.).
<b>Undetermined Sites</b>	
Rock Circle	Update recordation (if necessary, data recovery (if applicable). Off-Site: publish research focus article or professional society presentation, or public education and outreach (e.g., website, kiosk, etc.).

\* Applies to OAR 345-022-0090(1) (a) through (c)

Source: B2HAPPDoc3-36 ASC 19\_Exhibit S\_Cultural\_ASC\_Public 2018-09-28. Attachment S-9. Table 6-2.

**Table HCA-8 Potential Minimization and Mitigation Methods for Indirect Impacts\***

Resource Category	Example Resource Types	Potential Management Methods for Indirect Impacts
Trails (NHT, stage trails, freight roads, etc.)	<ul style="list-style-type: none"> <li>Trail remnants/segments</li> <li>Associated trail sites or features (stations, burials, inscriptions)</li> </ul>	<ul style="list-style-type: none"> <li>Recording—including HABS/HAER/HALS**</li> <li>Additional literature or archival review (e.g. historic maps, local papers)</li> <li>Remote sensing</li> <li>Purchase of conservation easement or other land protection where trail traces exist</li> <li>Historic trails restoration within and outside Project area</li> <li>Public signage, publication/print/media, and/or interpretive plans</li> </ul>
Historic Buildings and Structures	<ul style="list-style-type: none"> <li>Farm and ranch sites/homesteads</li> <li>Historic districts</li> <li>Utility lines</li> <li>Water conveyance systems</li> <li>Mining sites</li> <li>Bridges, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Photo documentation and scale drawings</li> <li>National Register Nomination (if owner consents)</li> <li>HABS/HAER/HALS documentation</li> <li>Additional archival and literature review</li> <li>Restoration of historic building or structure</li> <li>Relocation of historic building or structure</li> <li>Public interpretation (with owner permission)</li> </ul>
Historic Property of Religious or Cultural Significance to Indian Tribes (TCPS; limited to those subject to EFSC standards)	<ul style="list-style-type: none"> <li>Ceremonial areas</li> <li>Vision quest sites</li> <li>Hunting and gathering areas</li> </ul>	<ul style="list-style-type: none"> <li>Additional literature/archival review</li> <li>Ethnographic documentation</li> <li>Oral histories</li> <li>Public archaeology funding</li> <li>As recommended by impacted tribes</li> </ul>

\* Applies to OAR 345-022-0090(1) (a)

\*\* HABS – Historic American Building Survey; HAER – Historic American Engineering Record; HALS – Historic American Landscape Survey

Source: B2HAPPDoc3-36 ASC 19\_Exhibit S\_Cultural\_ASC\_Public 2018-09-28. Attachment S-9. Table 6-3.

*See DPO IV.K.1.4, Mitigation (Page 444-445)*

# Council Review of DPO/Comments

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## **Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090**

- Historic, Cultural, and Archaeological Resources including Tribal Resources
  - **Recommended Historic, Cultural, and Archaeological Resources Condition 2:**...the certificate holder shall submit to the Department, the State Historic Preservation Office (SHPO), and applicable Tribal Governments, for review and Department approval a final Historic Properties Management Plan (HPMP)...



# Council Review of DPO/Comments

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## **Section IV.M. Public Services: OAR 345-022-0110**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: **sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.**

\*\*\*

Emphasis added

# Council Review of DPO/Comments

## Section IV.M. Public Services: OAR 345-022-0110

**Table PS-2: Estimated Workers and Population Change during Peak Construction**

Workers	Proposed Route		Alternative Routes		
			Double Mountain	Morgan Lake	West of Bombing Range Road
	Spread 1	Spread 2	Spread 2	Spread 1	Spread 1
Commute to Job Site Daily	61	49	2	8	1
Move to the Analysis Area alone	164	131	5	21	1
Move to the Analysis Area with family	18	15	1	2	0
<b>Total</b>	<b>243</b>	<b>194</b>	<b>8</b>	<b>32</b>	<b>2</b>
<b>Population</b>					
2015 Population (Analysis Area)	129,516	46,385	30,380	25,790	11,190
Number of People Temporarily Relocating	182	146	8	31	2
As a Percent of 2015 Population	0.1%	0.3%	0.0%	0.1%	0.0%

*See Table PS-2, DPO Section IV.M. Public Services (Page 489)*

# Council Review of DPO/Comments

## Section IV.M. Public Services: OAR

**345-022-0110**

### • Impacts to Traffic Safety Providers

- Traffic impacts from construction of the proposed facility (Table PS-7: Evaluation of Facility Impacts on Volume-to-Capacity Ratios for Roads..)

Table PS-7: Evaluation of Facility Impacts on Volume-to-Capacity Ratios for Roads Potentially Used during Facility Construction

Multi-use Areas	Potential Hauling or Commuting Route	Road Classification <sup>1</sup>	Existing Peak Traffic Volume <sup>2</sup>	Road Capacity <sup>2</sup>	Existing V/C Ratio <sup>2</sup>	Estimated Daily Personal and Construction Vehicles	With Facility Peak Traffic Volume <sup>3</sup>	With Facility V/C Ratio <sup>4</sup>	Increase in V/C Ratio From Facility Construction <sup>5</sup>	ODOT Maximum V/C Ratio <sup>6</sup>	V/C Ratio Exceeds ODOT Maximum with Facility?
MO-01, MO-02, MO-03, MO-04, UM-01, UM-02	I-84	Interstate Highway, Unincorporated Communities	2,205	5,513	0.40	130	2,335	0.42	0.02	0.70	No
	I-82	Interstate Highway, Unincorporated Communities	2,640	5,500	0.48	130	2,770	0.50	0.02	0.70	No
	US 730	Statewide (Not a Freight Route), Rural Lands	990	2,475	0.40	130	1,120	0.45	0.05	0.70	No
	OR 207	Regional Highway, Rural Lands	56	1,110	0.05	130	186	0.17	0.12	0.70	No
	OR 74	Regional Highway, Rural Lands	120	1,000	0.12	130	250	0.25	0.13	0.80 to 1.00	No
	US 395	Freight Route on a State Highway, Rural Lands	465	969	0.48	130	595	0.61	0.13	0.70	No
	Big Butter Creek Lane/Butter Creek Lamb Road	District/Local Interest Roads, Rural Lands	120	1,000	0.12	130	250	0.25	0.13	0.75	No
		District/Local Interest Roads, Rural Lands	120	1,000	0.12	130	250	0.25	0.13	0.75	No
MO-05, UM-03,	I-84	Interstate Highway, Unincorporated	2,205	5,513	0.40	130	2,335	0.42	0.02	0.70	No
	US 395	Freight Route on a State Highway, Rural Lands	465	969	0.48	130	595	0.61	0.13	0.70	No
	OR 74	Regional Highway, Rural Lands	120	1,000	0.12	130	250	0.25	0.13	0.80 to 1.00	No

See DPO Section IV.M.6. Traffic Safety (Page 499)

# Council Review of DPO/Comments

## Section IV.M. Public Services: OAR 345-022-0110

- **Impacts to Traffic Safety Providers**
  - County-specific Transportation and Traffic Plan (Public Services Condition 1)
  - Helicopter Use Plan (Public Services Condition 2)

Transportation and Traffic Plan

Boardman to Hemingway Transmission  
Line Project



1221 West Idaho Street  
Boise, Idaho 83702

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September 2018

*See DPO Section IV.M.6, Traffic Safety (Page 499)*



# Council Review of DPO/Comments

## Section IV.M. Public Services: OAR 345-022-0110

- **Impacts to Fire Protection Providers**
  - Fire protection providers (Table PS-9)
  - Fire Prevention and Suppression Plan provisions (Public Services Condition 5)
  - Proposed facility built to safety standards
  - Fire prevention and vegetation management measures found in other locations of ASC

*See DPO Section IV.M.8. Fire Protection (Page 519)  
Condition (Page 524)*



Fire Prevention and Suppression Plan

Boardman to Hemingway Transmission  
Line Project



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September 2018

# Council Review of DPO/Comments

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## **Section IV.N. Waste Minimization: OAR 345-022-0120**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:

(a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

(b) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

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*See DPO Section IV.N. Waste Minimization (Page 514)*

# Council Review of DPO/Comments

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## **Section IV.N. Waste Minimization: OAR 345-022-0120**

- Estimated Quantities of Solid Waste and Wastewater

### *Construction*

- Vegetation Waste (210,000 tons)
- Native Material (230,744 tons)
- Solid Waste (374 tons)
- No wastewater

### *Operations*

- Vegetation Waste (250 tons every 4-5 years)
- Longhorn Station restroom facility (11,000 gallons)

- Management and Minimization Measures



*See Table WM-1: Materials from Construction Activities, Recycled Totals and Disposal Locations (Page 516) and DPO Section IV.N., Waste Minimization (Pages 514 - 521)*

# Council Review of DPO/Comments

## Section IV.O. Division 23: Need Standard for Nongenerating Facilities

### OAR 345-023-0005 Need for a Facility

This division applies to nongenerating facilities as defined in ORS 469.503(2)(e), except nongenerating facilities that are related or supporting facilities. To issue a site certificate for a facility described in sections (1) through (3), the Council must find that the applicant has demonstrated the need for the facility. The Council may adopt need standards for other nongenerating facilities. This division describes the methods the applicant shall use to demonstrate need. In accordance with ORS 469.501(1)(L), the Council has no standard requiring a showing of need or cost-effectiveness for generating facilities. The applicant shall demonstrate need:

- (1) For electric transmission lines under **the least-cost plan rule, OAR 345-023-0020(1)**, or the **system reliability rule for transmission lines, OAR 345-023-0030**, or by demonstrating that the transmission line is proposed to be located within a “National Interest Electric Transmission Corridor” designated by the U.S. Department of Energy under Section 216 of the Federal Power Act;

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Emphasis Added



*See DPO Section IV.O. Division 23: Need Standard for Nongenerating Facilities/Section IV.O.1.  
Need for a Facility (Page 521)*



# Council Review of DPO/Comments

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## **Section IV.O. Division 23: Need Standard for Nongenerating Facilities**

### OAR 345-023-0020 Least-Cost Plan Rule

(1) The Council shall find that the applicant has demonstrated need for the facility if the capacity of the proposed facility or a facility substantially similar to the proposed facility, as defined by OAR 345-001-0010, is identified for acquisition in the short-term plan of action of an energy resource plan or combination of plans adopted, approved or acknowledged by a municipal utility, people's utility district, electrical cooperative, other governmental body that makes or implements energy policy, or electric transmission system operator that has a governance that is independent of owners and users of the system and if the energy resource plan or combination of plans:

\*\*\*

(2) The Council shall find that a least-cost plan meets the criteria of an energy resource plan described in section (1) if the Public Utility Commission of Oregon has acknowledged the least cost plan.



*See DPO Section IV.O. Division 23: Section IV.O.1. Need for a Facility: Least-Cost Plan Rule (Page 522)*

# Council Review of DPO/Comments

## Section IV.O. Division 23: Need Standard for Nongenerating Facilities

- OAR 345-023-0020 Least-Cost Plan Rule
  - OPUC acknowledged the ongoing permitting, planning studies, and regulatory filings for the proposed facility as well as an acknowledgement of construction of the proposed facility
    - OPUC Order No. 18-176 (OPUC acknowledgement of the applicant's 2017 IRP)

*See DPO Section IV.O.1. Need for a Facility (Page 539)*

ORDER NO. **18 176**  
ENTERED MAY 23 2018

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

LC 68

In the Matter of  
IDAHO POWER COMPANY,  
2017 Integrated Resource Plan.

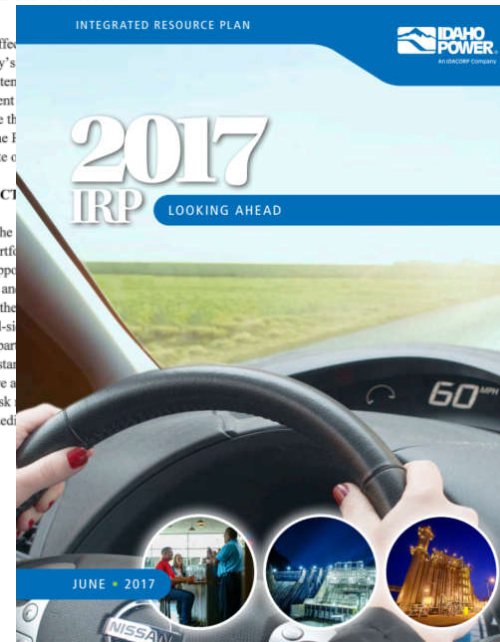
ORDER

DISPOSITION: 2017 IRP ACKNOWLEDGED WITH MODIFICATIONS  
AND EXCEPTIONS

This order memorializes our decision, made after a Public Meeting, concerning Idaho Power Company's (IRP). We acknowledge all but two of the action item revised action plan. Although our acknowledgement to Hemingway (B2H) related action items, we note that to our interpretation of IRP standards specific to the IRP not interpret or apply the standard of any other state or

### I. INTRODUCTION

The central feature of Idaho Power's 2017 IRP is the B2H project. It has been identified as part of the preferred resource portfolio for 2013, and 2015 IRPs. Several groups formed to oppose the B2H project, participated actively and effectively. Many groups and individuals are concerned about the impacts of B2H and share a preference for demand-side management alternatives to B2H. It is our view that the robust participation of individuals has supported a better and fuller understanding of the B2H project and other IRP issues. Although we acknowledge the selection of the B2H project as a least cost, least risk project, we remain grateful for the hard work, dedication, and input of all stakeholders in this process.



# Council Review of DPO/Comments

## **Section IV.O. Division 23: Need Standard for Nongenerating Facilities**

### **OAR 345-023-0030 System Reliability Rule for Electric Transmission Lines**

The Council shall find that the applicant has demonstrated need for an electric transmission line that is an energy facility under the definition in ORS 469.300 if the Council finds that:

- (1) The facility is needed to enable the transmission system of which it is to be a part to meet firm capacity demands for electricity or firm annual electricity sales that are reasonably expected to occur within five years of the facility's proposed in-service date based on weather conditions that have at least a 5 percent chance of occurrence in any year in the area to be served by the facility;
- (2) The facility is consistent with the applicable mandatory and enforceable North American Electric Reliability Corporation (NERC) Reliability Standards in effect as of September 18, 2015 as they apply either internally or externally to a utility system; and
- (3) Construction and operation of the facility is an economically reasonable method of meeting the requirements of sections (1) and (2) compared to the alternatives evaluated in the application for a site certificate.



*See DPO Section IV.O. Division 23: Section IV.O.1. Need for a Facility: System Reliability Rule (Page 524)*

# Council Review of DPO/Comments

## Section IV.O. Division 23: Need Standard for Nongenerating Facilities

- System Reliability Rule for Electric Transmission Lines
  - Facility is needed to enable the transmission system of which it is to be a part to meet firm capacity demands for electricity
  - North American Electric Reliability Corporation (NERC) Reliability Standards
  - Economically reasonable method of meeting the requirements of sections (1) and (2)

Idaho Power Company

Sales and Load Forecast Data

Monthly Summary <sup>1</sup>	1/2020	2/2020	3/2020	4/2020	5/2020	6/2020	7/2020	8/2020	9/2020	10/2020	11/2020	12/2020
Average Load (aMW)-50 <sup>th</sup> Percentile												
Residential	851	676	616	526	468	539	656	621	492	473	676	831
Commercial	510	462	444	442	441	475	517	515	481	456	473	512
Irrigation	3	3	9	133	352	599	656	513	334	74	5	3
Industrial	297	285	292	278	283	308	301	305	302	305	294	287
Additional Firm	118	112	110	109	108	105	112	111	110	108	116	118
Loss	151	129	122	125	140	175	196	179	146	117	131	149
<b>System Load</b>	<b>1,929</b>	<b>1,665</b>	<b>1,594</b>	<b>1,613</b>	<b>1,792</b>	<b>2,200</b>	<b>2,437</b>	<b>2,245</b>	<b>1,865</b>	<b>1,533</b>	<b>1,695</b>	<b>1,899</b>
Light Load	1,791	1,533	1,460	1,457	1,622	1,999	2,197	1,989	1,677	1,365	1,563	1,753
Heavy Load	2,038	1,762	1,699	1,727	1,939	2,346	2,626	2,446	2,015	1,653	1,810	2,014
<b>Total Load</b>	<b>1,929</b>	<b>1,665</b>	<b>1,594</b>	<b>1,613</b>	<b>1,792</b>	<b>2,200</b>	<b>2,437</b>	<b>2,245</b>	<b>1,865</b>	<b>1,533</b>	<b>1,695</b>	<b>1,899</b>
Peak Load (MW)-90 <sup>th</sup> Percentile												
System Peak (1 hour)	2,517	2,360	2,097	2,076	2,758	3,538	3,745	3,364	2,890	2,136	2,329	2,576
<b>Total Peak Load</b>	<b>2,517</b>	<b>2,360</b>	<b>2,097</b>	<b>2,076</b>	<b>2,758</b>	<b>3,538</b>	<b>3,745</b>	<b>3,364</b>	<b>2,890</b>	<b>2,136</b>	<b>2,329</b>	<b>2,576</b>

Monthly Summary <sup>1</sup>	1/2021	2/2021	3/2021	4/2021	5/2021	6/2021	7/2021	8/2021	9/2021	10/2021	11/2021	12/2021
Average Load (aMW)-50 <sup>th</sup> Percentile												
Residential	861	707	621	531	473	546	665	630	498	477	682	843
Commercial	514	481	447	445	445	478	520	519	485	459	477	516
Irrigation	3	3	9	134	354	601	659	516	336	75	5	3
Industrial	298	297	294	279	284	310	303	307	303	306	296	288
Additional Firm	118	116	111	110	109	105	112	112	111	108	116	119
Loss	153	135	123	126	141	176	197	180	147	117	132	150
<b>System Load</b>	<b>1,946</b>	<b>1,738</b>	<b>1,605</b>	<b>1,625</b>	<b>1,806</b>	<b>2,216</b>	<b>2,456</b>	<b>2,264</b>	<b>1,879</b>	<b>1,544</b>	<b>1,708</b>	<b>1,918</b>
Light Load	1,807	1,601	1,470	1,468	1,634	2,014	2,214	2,006	1,690	1,375	1,575	1,771
Heavy Load	2,066	1,841	1,702	1,739	1,954	2,364	2,647	2,467	2,031	1,676	1,814	2,034
<b>Total Load</b>	<b>1,946</b>	<b>1,738</b>	<b>1,605</b>	<b>1,625</b>	<b>1,806</b>	<b>2,216</b>	<b>2,456</b>	<b>2,264</b>	<b>1,879</b>	<b>1,544</b>	<b>1,708</b>	<b>1,918</b>
Peak Load (MW)-90 <sup>th</sup> Percentile												
System Peak (1 hour)	2,529	2,372	2,105	2,087	2,780	3,570	3,797	3,406	2,917	2,149	2,343	2,596
<b>Total Peak Load</b>	<b>2,529</b>	<b>2,372</b>	<b>2,105</b>	<b>2,087</b>	<b>2,780</b>	<b>3,570</b>	<b>3,797</b>	<b>3,406</b>	<b>2,917</b>	<b>2,149</b>	<b>2,343</b>	<b>2,596</b>



See DPO Section IV.O, Need for a Facility (Page 539)  
See ASC Exhibit N (Page 1614/2046)

# Council Review of DPO/Comments

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## **Section IV.P. Division 24 Standards**

### Section IV.P.1. Siting Standards for Transmission Lines: OAR 345-024-0090

To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:

- (1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;
- (2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.



*See DPO Section IV.P.1. Siting Standards for Transmission Lines: OAR 345-024-0090 (Page 529)*

# Council Review of DPO/Comments

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## **Section IV.P. Division 24 Standards**

### Section IV.P.1. Siting Standards for Transmission Lines: OAR 345-024-0090

#### **Methods and Results**

- Alternating Current Electric Fields
- Induced Current

#### **Minimization Measures (conditions)**

- Minimum clearances
- Grounding
- Landowner Education
- Setbacks from Structures



500-kilovolt (kV) transmission line near Melba, Idaho

# Council Review of DPO/Comments

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## **Section IV.P. Division 24 Standards**

### **Section IV.P.1. Siting Standards for Transmission Lines: OAR 345-024-0090**

- Minimum Ground clearances (Siting Stand. for Transmission Lines Condition 1)
- NESC Standards (Siting Stand. for Transmission Lines Conditions 2-3)



*See DPO Section IV.P.1. Siting Standards for Transmission Lines (Page 532)*



# Council Review of DPO/Comments

## **Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction**

### **Section IV.Q.1. Noise Control Regulations: OAR 340-035-0035, OAR 340-035-0010 and OAR 340-035-0100**

\*\*\*

#### **(B) New Sources Located on Previously Unused Site:**

(i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b)–(f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.



*See DPO Section IV.Q.1. Noise Control Regulations (Page 538)*



# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

### Section IV.Q.1. Noise Control Regulations: OAR 340-035-0035, OAR 340-035-0010 and OAR 340-035-0100

\*\*\*

(5) Exemptions: Except as otherwise provided in subparagraph (1)(b)(B)(ii) of this rule, the rules in section (1) of this rule shall not apply to:

\*\*\*

(g) Sounds that originate on construction sites

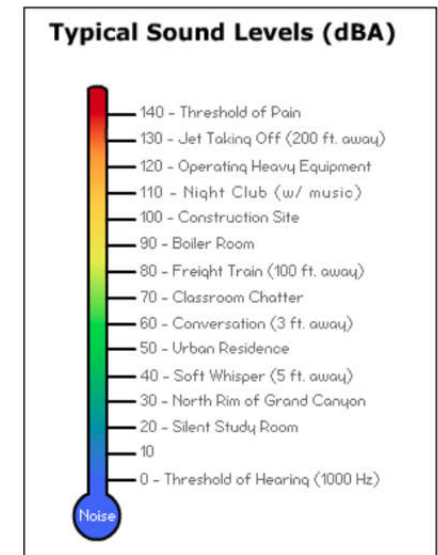
(h) Sounds created in construction or maintenance of capital equipment;

\*\*\*

(j) Sounds generated by the operation of aircraft and subject to pre-emptive federal regulation...

\*\*\*

Figure 12: Common Noise Sources and Expected Noise Levels



Source: OSHA  
<https://www.osha.gov/SLTC/noisehearingconservation/>  
Accessed 01-14-2019

# Council Review of DPO/Comments

## **Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction**

### **Section IV.Q.1. Noise Control Regulations: OAR 340-035-0035, OAR 340-035-0010 and OAR 340-035-0100**

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(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b)–(f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.



*See DPO Section IV.Q.1. Noise Control Regulations (Page 538)*

# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

### Section IV.Q.1. Noise Control Regulations: OAR 340-035-0035

Under the maximum allowable noise standard at OAR 340-035-0035(1)(b)(B)(i), a new industrial or commercial noise source to be located on a previously unused site may not exceed the noise levels specified in Table 8 of the noise rules, as represented in Table NC-2, *Statistical Noise Limits for Industrial and Commercial Noise Sources* below.

**Table NC-2: Statistical Noise Limits for Industrial and Commercial Noise Sources**

Statistical Descriptor <sup>1</sup>	Maximum Allowable Noise Standards (dBA)	
	Daytime (7:00 AM - 10:00 PM)	Nighttime (10:00 PM - 7:00 AM)
L50	55	50
L10	60	55
L1	75	60
Notes: 1. The hourly L50, L10 and L1 noise levels are defined as the noise levels equaled or exceeded 50 percent, 10 percent, and 1 percent of the hour, respectively. Source: OAR 340-035-0035, Table 8		

*See DPO Section IV.Q.1. Noise Control Regulations (Page 547 and 551)*

# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

Section IV.Q.1. Noise Control  
Regulations: OAR 340-035-0035,  
OAR 340-035-0010 and OAR 340-  
035-0100

- Methods and Assumptions for Corona Noise Analysis
- Results of Noise Analysis

*See DPO Section IV.Q.1. Noise  
Control Regulations (Page 550)*



Table NC-3: Summary of Acoustic Modeling Results—Comparison of Predicted Facility Sound Levels to Late Night Baseline L50 (NSR Exceedances)

NSR Number (Map ID)	Distance from NSR to the Transmission Line (feet)	Nearest Milepost	County	Late Night Baseline Sound Pressure Level (dBA)	Future Sound Level (Foul Weather) (dBA)	Increase (dBA)
5002	2,067	58.9	Umatilla	25	36	+11
8	2,139	58.9	Umatilla	25	36	+11
9	1,834	59.6	Umatilla	25	36	+12
10	1,834	59.6	Umatilla	25	36	+12
11	1,398	59.7	Umatilla	25	38	+13
5004	338	106.7	Union	32	47	+15
69	1,467	142.6	Baker	27	39	+12
70	1,053	142.7	Baker	27	40	+14
5010	1,170	174.2	Baker	24	41	+17
92	2,434	215.2	Malheur	24	35	+12
93	2,283	216	Malheur	24	35	+11
94	1,801	216.2	Malheur	24	37	+12
95	2,070	216.3	Malheur	24	36	+12
96	1,470	216.5	Malheur	24	38	+13
97	1,693	216.5	Malheur	24	37	+13
98	1,102	216.8	Malheur	24	39	+15
99	1,768	216.9	Malheur	24	37	+13
100	2,119	217	Malheur	24	36	+12
101	673	217	Malheur	24	42	+17
102	607	217.3	Malheur	24	42	+18
103	2,575	217.4	Malheur	24	35	+11
104	1,598	217.4	Malheur	24	37	+14
105	745	217.4	Malheur	24	41	+17
106	2,621	217.7	Malheur	24	35	+11
107	2,474	217.9	Malheur	24	35	+12
108	2,119	218.1	Malheur	24	36	+12
109	2,595	218.1	Malheur	24	35	+11
110	2,648	218.1	Malheur	24	35	+11
5011	780	227.1	Malheur	24	42	+18
111	2,746	253.5	Malheur	24	35	+11
5008	1,340	254.7	Malheur	24	38	+14
5009	2,060	254.7	Malheur	24	26	+12
112	1,732	254.9	Malheur	24	37	+13
113	3,087	263.7	Malheur	24	34	+11
115	659	6.1	Union	32	43	+11
133	890	255.4	Malheur	24	40	+16

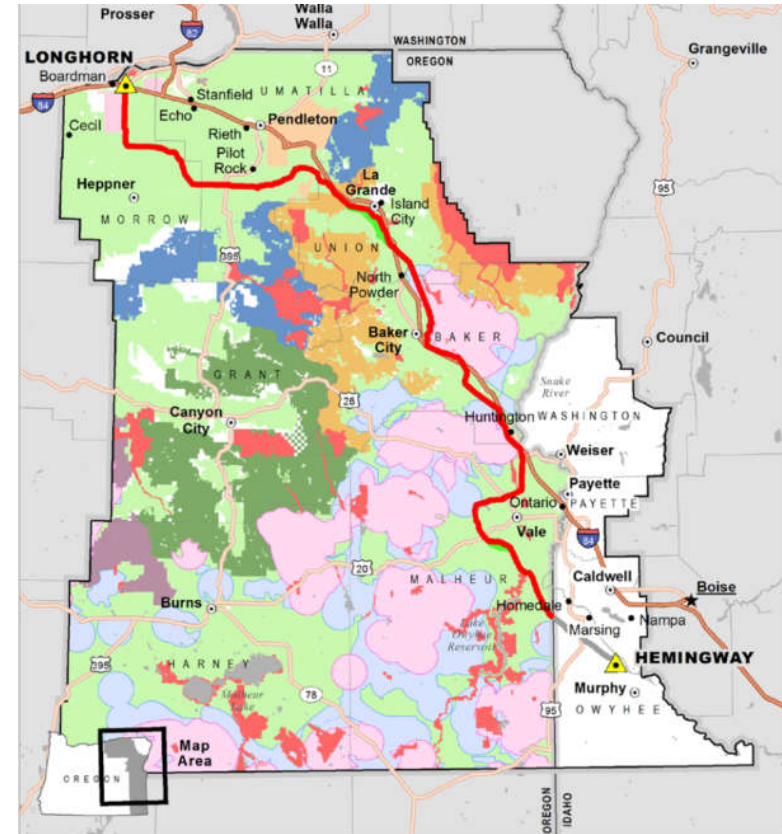
Source: B2HAPPDoc3-41 ASC 24\_Exhibit X\_Noise\_ASC 2018-09-28, Table X-5.

# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

Section IV.Q.1. Noise Control Regulations: OAR 340-035-0035, OAR 340-035-0010 and OAR 340-035-0100

- **Compliance with DEQ Noise Rules:**
- **Ambient Antidegradation Standard:**
  - Request for Exception to the Ambient Antidegradation Standard Entirety of Proposed Transmission Line Route
  - Recommended Noise Control Conditions



See DPO Section IV.Q.1. Noise Control Regulations (Page 552)

# Council Review of DPO/Comments

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## **Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction**

Section IV.Q.1. Noise Control Regulations: OAR 340-035-0035, OAR 340-035-0010 and OAR 340-035-0100

- **Compliance with DEQ Noise Rules: Ambient Antidegradation Standard:**
  - Request for Variance to the Ambient Antidegradation Standard
  - Recommended Noise Control Conditions

*See DPO Section IV.Q.1. Noise Control Regulations (Page 561)*

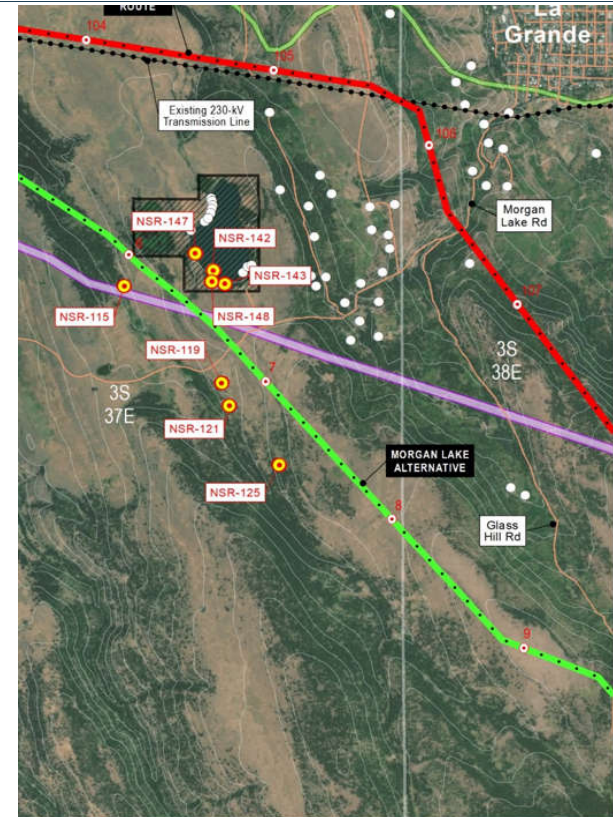


# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

Section IV.Q.1. Noise Control Regulations:  
ORAR 340-035-0035, ORAR 340-035-0010 and  
ORAR 340-035-0100

- Applicant responses to comments: Morgan Lake Campground



# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

Section IV.Q.2. Removal Fill Law: OAR 141-085-0500 through -0785

### **Removal Fill Permit**

- Methodology: Wetland Delineation/Survey Area
- **Department Determinations**
  - Independent Utility
  - Protected, Conservation and Best Use
  - No Unreasonable Interference
- **Determination Considerations**
  - Public Need and Benefit
  - Economic Cost
  - Alternatives
  - Conformance
  - Streambank Protection
  - Mitigation

*See DPO Section IV.Q.2. Removal Fill Law (Pages 565-588)*



# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

### Section IV.Q.2. Removal Fill Law: OAR 141-085-0500 through -0785

- Compensatory Wetland and Non-Wetland Mitigation Plan (Removal Fill Condition 3)
- General and Special Conditions set forth in the removal-fill permit (Removal Fill Condition 5)
- Removal Fill Permit (Removal Fill Condition 6)

Department of State Lands  
775 Summer Street, Suite 100  
Salem, OR 97301-1279  
☎ 503-986-5200

Permit No.: **61621-RF**  
Permit Type: **Removal/Fill**  
Waterway: **Many various wetlands/waters**  
County: **Morrow, Umatilla, Union, Baker, Malheur**  
Expiration Date: **(To be determined when the permit is issued.)**

#### Idaho Power Company

**IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE REFERENCED APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:**

1. This permit does not authorize trespass on the lands of others. The permit holder must obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands (DSL) and all duly authorized representatives of the Director must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. In issuing this permit, DSL makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
7. Permittee must defend and hold harmless the State of Oregon, and its officers, agents and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
8. Authorization from the U.S. Army Corps of Engineers may also be required.

**NOTICE:** If removal is from state-owned submerged and submersible land, the permittee must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940 if you want a transfer of title; public rights to such filled lands are not extinguished by issuance of this permit. This permit does not relieve the permittee of an obligation to secure appropriate leases from DSL, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact Department of State Lands, 503-986-5200.

Kirk Jarvie, Southern Operations Manager  
Aquatic Resource Management  
Oregon Department of State Lands

\_\_\_\_\_  
Authorized Signature

*See DPO Section IV.Q.2. Removal Fill Law (Pages 565-588)*



# Council Review of DPO/Comments

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## **Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction**

### **Section IV.Q.3. Water Rights: OAR 690-310-0000; OAR 690-380-0000**

- Water Use:
  - Construction:
    - Quantity: 36.5 to 54.8 million gallons
    - Uses: Dust suppression, drinking/sanitary, foundation, access road construction, reseeding/restoration
    - Sources: purchases from local municipalities
  - Operation: *very minimal needed*
- Groundwater, surface water or water right transfer not needed



*See DPO Section IV.Q.3. Water Rights (Pages 589-590)*

# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

### Section IV.Q.4. Fish Passage: OAR 635-412-0035

- Regulatory Overview
- Methodology

**Table 1. Road-Stream Crossing Ownership, Risk Summaries, Proposed Crossing Types, and Fish Passage Information**

Stream Name	Crossing ID	Nearest Proposed Route Milepost	Owner-ship	Fish Use	Risk Ratings		Existing Crossing Type	Potential Crossing Type(s) <sup>1</sup>		Crossing Characteristics		
					Stream	Project		Proposed	Alternatives	Crossing Type – Explanation	Considerations	ODFW Fish Passage Trigger
Little Butter Creek	R-08883	27.8	Private	Resident	Medium	Medium	Culvert	2	3A; 3B	4.7-foot corrugated metal pipe in place.	Culvert is under-sized with limited fill covering pipe. No new construction or major replacement is needed.	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.
Butter Creek	R-08916	27.9	Private	Resident	Medium	Medium	Bridge	1	–	90-foot steel I-beam with center support bridge in place.	–	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.
Butter Creek	R-11312	34.2	Private	Resident	Low	Medium	Bridge	3A	–	48-foot railcar bridge in place.	Bridge and abutments outside of the OHW could be replaced with similar railcar. No new construction or major replacement is needed.	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.
Butter Creek	R-17426	49.9	Private	Resident	Medium	Low	Bridge	1	–	30-foot steel bridge in place.	–	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.
West Birch Creek	R-20404	59.7	Private	Anadromous	Low	Medium	Bridge	1	3B	42-foot steel I-beam bridge in place.	Needs new decking, may need some structural support outside the OHW. No new construction or major replacement is needed.	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.
East Birch Creek	R-20809	63.2	Private	Anadromous	Not Rated <sup>2</sup>	Not Rated <sup>2</sup>	NA- <sup>2</sup> Bridge	1	–	A Major Road (asphalt road) crossing that would not be changed from Project actions and not needing to be surveyed	–	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.
California Gulch	R-21694	64.1	Private	Anadromous	Medium	Low	NA- <sup>2</sup> Culvert	2	–	No access to crossing locations, but stream was surveyed.	–	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.
East Birch Creek	R-21604	64.2	Private	Anadromous	Low	Medium	Bridge	1	–	43-foot steel I-beam bridge in place.	Possibly some structural modifications outside the OHW. No new construction or major replacement is needed.	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.
Ray Creek	R-20492	65.9	Private	Resident	Low	Low	Culvert	2	–	3.5-foot corrugated metal pipe in place.	–	No new construction or major replacement proposed. ODFW Fish Passage Plan not anticipated.

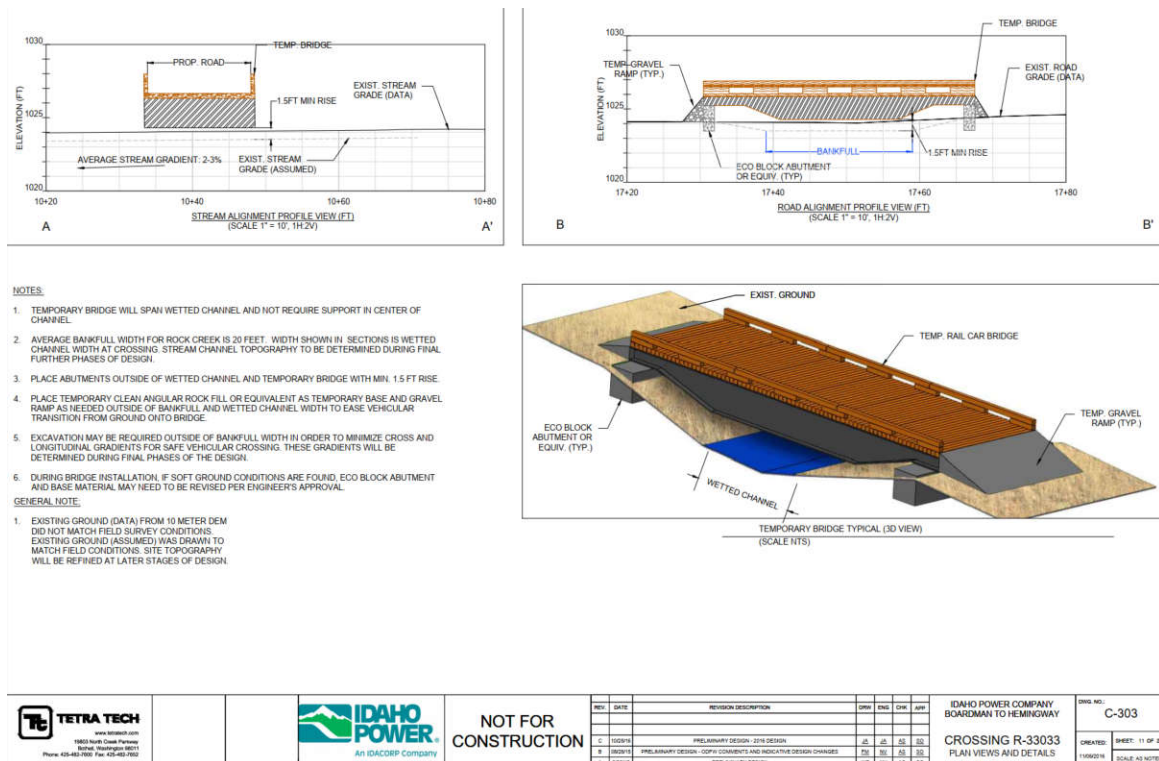
*See DPO Section IV.Q.4. Fish Passage (Pages 591-593)*



# Council Review of DPO/Comments

## Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

### Section IV.Q.4. Fish Passage: OAR 635-412-0035

- Crossings requiring ODFW Fish Passage Permit/Design Approval
  - Little Rock Creek, Rock Creek, Goodman Creek, Cavanaugh Creek, Benson Creek
- ODFW Permit Requirements
  - 10 Conditions (design standards, maintenance, monitoring, fish salvage)



 <b>TETRA TECH</b> <small>www.tetra-tech.com</small> 19801 North Cove Parkway Bozeman, Montana 59717 Phone 406-463-7050 Fax 406-463-7052		 <b>IDAHO POWER</b> <small>An IDACORP Company</small>		<b>NOT FOR CONSTRUCTION</b>		<table><tr><th>REV</th><th>DATE</th><th>REVISION DESCRIPTION</th><th>APP</th><th>ENG</th><th>CHK</th><th>APP</th></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td>1</td><td>10/20/19</td><td>PRELIMINARY DESIGN - 2019 DESIGN</td><td>JL</td><td>JS</td><td>JS</td><td>JS</td></tr><tr><td>2</td><td>10/20/19</td><td>PRELIMINARY DESIGN - COPY COMMENTS AND RESOLUTIVE DESIGN CHANGES</td><td>JS</td><td>JS</td><td>JS</td><td>JS</td></tr></table>						REV	DATE	REVISION DESCRIPTION	APP	ENG	CHK	APP								1	10/20/19	PRELIMINARY DESIGN - 2019 DESIGN	JL	JS	JS	JS	2	10/20/19	PRELIMINARY DESIGN - COPY COMMENTS AND RESOLUTIVE DESIGN CHANGES	JS	JS	JS	JS	<b>IDaho POWER COMPANY</b> <b>BOARDMAN TO HEMINGWAY</b> <b>CROSSING R-33033</b> <b>PLAN VIEWS AND DETAILS</b>		<b>ENG. NO. C-303</b> <b>CREATED: 11 OF 33</b> <b>THROWN: SCALE AS NOTED</b>	
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1	10/20/19	PRELIMINARY DESIGN - 2019 DESIGN	JL	JS	JS	JS																																					
2	10/20/19	PRELIMINARY DESIGN - COPY COMMENTS AND RESOLUTIVE DESIGN CHANGES	JS	JS	JS	JS																																					

See DPO Section IV.Q.4. Fish Passage (Pages 591-593)

# Council Review of DPO/Comments

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## **Part 2 of 2**

Council Deliberation:

Questions/Comments on DPO, Comments/Issues Raised, and  
Applicant Responses

# Council Deliberation



# Agenda Item D (Action Item)

## **Permanent Amendment Rulemaking Council Review of Public Comments and Adoption of Final Rules**

January 24, 2020

Christopher M. Clark, Siting Policy Analyst & Rules Coordinator



# Overview

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- Procedural History and Schedule
- Summary of Proposed Rules
- Review of Comments and Staff Evaluation
- Rulemaking Schedule



# Procedural History & Schedule

Permanent Rulemaking Steps	Completion Date
Council initiates permanent rulemaking process.	Aug. 22, 2019
Staff solicits written advice from stakeholders	Aug. 28 – Sept. 27, 2019
Staff prepares draft proposed rules & notice	Oct. 10, 2019
Council authorizes staff to issue Notice	Oct. 25, 2019
Staff issues Notice	Oct. 25, 2019
Rulemaking Hearing	Nov. 21, 2019
Last day for public comment	Dec. 18, 2019 (5:00 p.m.)*
<b>Council considers testimony and adopts permanent rules</b>	<b>Dec. 20, 2019 &amp; Jan. 24, 2020</b>
Staff submits permanent rule filing to Secretary of State	Jan. 24, 2020 (or later)
Permanent rules are effective	Jan. 24, 2020 (or later)
Last date temporary rules could be effective	Feb. 18, 2020
Council initiates rulemaking project to evaluate rules	Jan. 1, 2022

\*Council extended the public comment period prior to the public hearing on Nov. 21, 2019.

# 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.
  - 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)

# Overview of Public Comments

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- Council reviewed and responded to procedural requests from Friends of the Columbia Gorge, et al. on Nov. 21, 2019.
- Council held a public hearing on Nov. 21, 2019. Ms. Irene Gilbert provided oral testimony.
- Council received approximately 209 additional written comments before the deadline.
- Commenters raised numerous procedural and substantive issues, staff's evaluation of major substantive issues raised in comments follows.

# OAR 345-027-0011

## Applicability of Rules

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- **Issue:** Commenters oppose the proposed OAR 345-027-0311 because “it would be unreasonable and unfair to concerned stakeholders and the public at large, and because it would violate the Administrative Procedures Act.”
- **Staff Recommendation:** Staff does not recommend rule changes. In its January 16, 2020 opinion, the Oregon Supreme Court rejected the argument that the Council could not adopt new rules that validated actions taken under previous rules that the court later held were invalidly promulgated.

# Multiple Rules

## Early Notice & Public Comment Period

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**Issue:** Commenters raise concerns that “the Proposed Rules would eliminate the public’s ability to comment on requested amendments early in the process \* \* \* and will result in biased (one-sided) draft proposed orders that only take into account energy developers’ positions and not any comments from the public.”

### **Staff Recommendation:**

- Staff does not recommend amending proposed rules to establish additional public comment periods. Staff recommends Council review this issue further in the rulemaking scheduled for 2022.
- Council may wish to provide additional notice early in the review process. Options are provided on the following slide.

# Option 1: Notice of Preliminary Request

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OAR 345-027-0360(2): After receiving a preliminary request for amendment, the Department must notify the public that a preliminary request for amendment has been received by:

(a) Sending notice by mail or email to:

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

(B) All persons on any special mailing list established for the facility;

(C) The reviewing agencies for the facility, as defined in OAR 345-001- 0010(52); and

(D) The property owners on the list provided under OAR 345-027-0360(1)(f);

(b) Posting an announcement on its the Department's website to notify the public that a preliminary request for amendment has been received. The announcement must include a copy of the preliminary request for amendment."

# Option 2: Notice of Complete Request

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OAR 345-027-0365: (2) If the date of issuance specified under subsection (1)(a) of this rule is more than 7 days after the date the request is determined to be complete, the department must send a notice containing the information under paragraph (a)(B) and (C) of this section by mail or email to:

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

(b) All persons on any special mailing list established for the facility;

(c) The reviewing agencies for the facility, as defined in OAR 345-001-0010(52); and

(d) The property owners on the list provided under OAR 345-027-0360(1)(f);

# Option 3: Optional Informational Meeting

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**OAR 345-027-0363(2):** After receiving a preliminary request for amendment, the Department may:

**(a) Seek comments from reviewing agencies to determine whether that request is complete; and**

**(b) Hold one or more informational meetings on the preliminary request in the vicinity of the site of the facility. The informational meeting is not a public hearing.**



## OAR 345-027-0371(6) Requests for Contested Cases

---

**Issue:** Commenters recommend that the requirement for a person to provide a description of their interest in a proceeding on a request for amendment is “unnecessary, duplicative, and unduly burdensome” and “doesn’t impact the decision about whether or not the request for an issue is valid.”

**Staff Recommendation:** Staff recommends Council:

- Delete the proposed OAR 345-027-0371(6)(e) and existing OAR 345-015-0016(5)(d) because these sections duplicate requirements in OAR 345-027-0371(6)(h) and (i) and the Attorney General’s model rules, respectively.
- Consider additional changes in rulemaking scheduled for 2022.

# OAR 345-027-0371

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(6) Contested case requests must be submitted in writing and must be received by the Department by a specified deadline that is at least 30 days from the date of notice in section (4). Contested case requests must include:

\* \* \*

~~(e) A detailed description of the person's interest in the proceeding and how that interest may be affected by the outcome of the proceeding;~~

~~(f)~~ (e) Name and address of the person's attorney, if any;

~~(g)~~ (f) A statement of whether the person's request to participate in a contested case is as a party or a limited party, and if as a limited party, the precise area or areas in which participation is sought;

~~(h)~~ (g) If the person seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the person's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

~~(i)~~ (h) If the person seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the person's qualifications to represent such public interest; and

(j) A statement of the reasons why others who commented on the record of the public hearing cannot adequately represent the interest identified in subsections (h) or (i).



# Multiple Rules

## References to Council Standards

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- **Issue:** Several narrow references to “Council standards” in the Proposed Rules should be modified to also refer to any other “applicable laws,” in order to match similar language elsewhere in the Proposed Rules and comply with applicable law.
- **Staff Recommendation:**
  - Staff recommends Council amend references to Council standards in proposed OAR 345-027-0350(4)(a) and OAR 345-027-0380(2)(e) and (6)(f) to also refer to “applicable laws.”
  - Staff does not recommend changes to proposed OAR 345-027-0360.

# OAR 345-027-0350

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Except for changes allowed under OAR 345-027-0353, an amendment to a site certificate is required to:

\* \* \*

(4) Design, construct, or operate a facility in a manner different from the description in the site certificate, if the proposed change:

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard;

# OAR 345-027-0380

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(2) Requests under section (1) must be submitted in writing to the Department of Energy and must include: \* \* \*

(e) Reasons why the type C review is adequate to prevent significant adverse impacts to the resources and interests protected by applicable laws or Council standards.

(6) To grant a request under section (1), the Department or the Council must find: \* \* \*

(f) Type C review is adequate to prevent significant adverse impacts to the resources and interests protected by ~~the~~ applicable laws or Council's standards.

# OAR 345-027-0371(10)(a)

## Limitations on Issues in a Contested Case

---

**Issue:** “The Council should reject the Proposed Rule language that would require the Council\* \* \*to decide “the issues each contested case party may participate on” and that would limit “[t]he issues a party to a contested case proceeding may participate on . . . to those issues that party properly raised in its contested case request.”

- **Staff Recommendation:** Staff recommends Council amend the proposed OAR 345-027-0371(10)(a) to make limitation on issues optional for persons granted limited party status

# OAR 345-027-0371(10)(a)

(10) The Council must take one of the following actions when determining if a request identifying one or more properly raised issues justifies a contested case proceeding:

(a) If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council must conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0014 and 345-015-0018 to 345-015-0085. The Council must identify the contested case parties and shall identify the issues each contested case party may participate on. The parties to a contested case proceeding must be limited to those persons who commented on the record of the public hearing and who properly raised issues in their contested case request that the Council found sufficient to justify a contested case, except that the certificate holder is an automatic party to a contested case. The Council may limit the issues a limited party to a contested case proceeding may participate on ~~must be limited~~ to those issues that party properly raised in its contested case request and that the Council found sufficient to justify a contested case, ~~except that~~ and the certificate holder may participate on any issue the Council found sufficient to justify a contested case proceeding;



# Council Decision on Permanent Rules

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## Option 1

Adopt proposed rules, with changes recommended by staff, as permanent rules.

## Option 2

Adopt proposed rules, with changes recommended by staff, as permanent rules, with modifications.

## Option 3

Reject proposed rules, direct staff to re-issue the notice of proposed rulemaking.

# Agenda Item E

## **PUBLIC COMMENT**

# Agenda Item F (Action Item)

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

January 24, 2020

Chase McVeigh-Walker, Senior Siting Analyst, ODOE



# Presentation Overview:

---

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

# Facility Overview

---

**Certificate Holder:**

Horseshoe Bend Wind, LLC

**Certificate Holder Parent Company:**

Caithness Shepherds Flat, LLC; subsidiary of  
Caithness Energy, LLC

**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

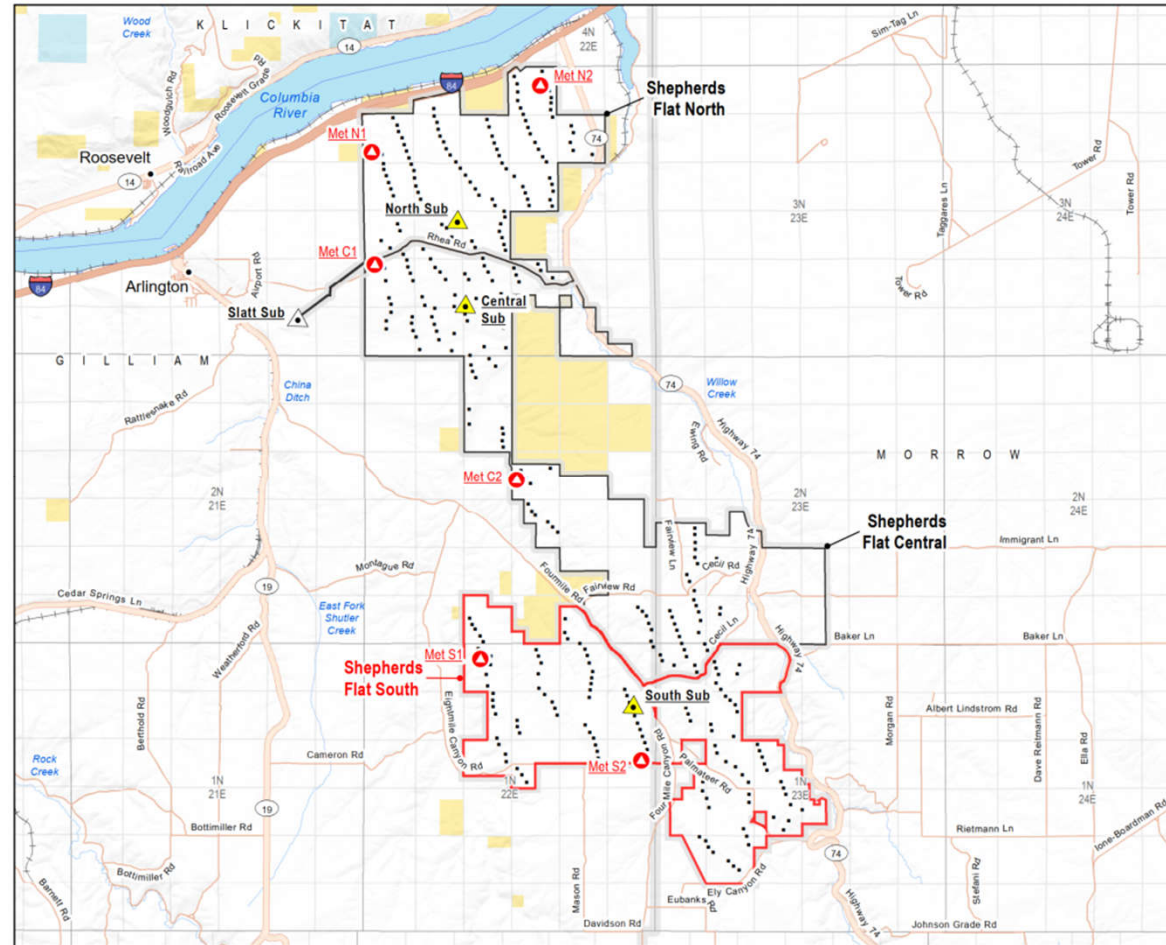
# Facility Site/Site Boundary Location 1 of 2

## Site Boundary

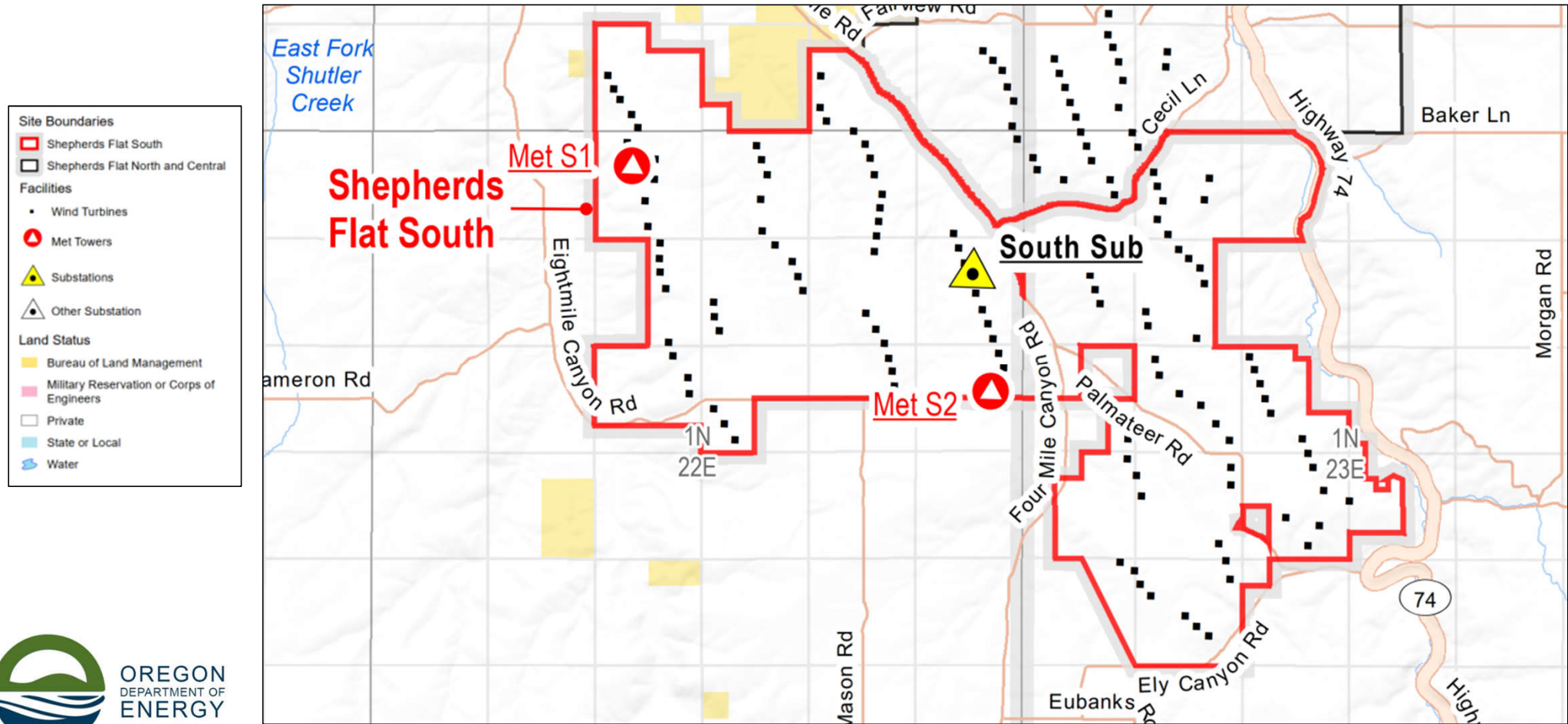
- Contains approximately 11,769 acres
- Private Land in Gilliam and Morrow counties

## 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





# RFA3 – Requested Modifications

---

- Requests the authorization to repower 116 existing wind turbines. The repowering would include removing and replacing the wind turbine blades, with longer blades, consequently lowering minimum aboveground blade tip clearance from 25 to 21.5 meters. \*
- Type B Amendment Review

## Condition Changes

- Condition 26

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

# RFA2 – Procedural History

Requirement	Responsible Party	Date
Preliminary Request for Amendment 2	Certificate Holder	10/07/2019
Type B Determination	ODOE	10/23/2019
Complete RFA2 Received	Certificate Holder	12/26/2019
Draft Proposed Order Issued (Type B)	ODOE	12/27/2019
Comment Period (21-days)	ODOE	1/17/2020
Proposed Order/Public Notice	ODOE	1/21/2020
Council review of Proposed Order	EFSC	1/24/2020
Final Order/Amended Site Certificate	EFSC	TBD

# Overview of Draft Proposed Order

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

- Organizational Expertise
- **Land Use**
- Protected Areas
- Retirement and Financial Assurance
- Threatened and Endangered Species
- Scenic Resources
- Historic, Cultural and Archeological Resources
- Recreation
- Siting Standards for Transmission Lines
- Removal-Fill Law
- Water Rights

# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.1. (Starting on page 11)

- Recommend Condition 104 (New Condition)  
Specify construction commencement deadline for the proposed RFA2 facility repower
- Recommend Condition 105 (New Condition)  
Specify construction completion deadline for the proposed RFA2 facility repower

# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.3. (Starting on page 17)

- **Recommend Condition 106 (New Condition)**  
Implementation of any necessary mitigation and remediation measures, or operational timing recommendations, if identified in the forthcoming foundation uprate analysis
- **Recommend amendment to Condition 62**  
Implementation of any necessary mitigation and remediation measures, or operational timing recommendations

# Overview of Draft Proposed Order

---

## **Soil Protection [OAR 345-022-0022]**

Draft Proposed Order, Section III.A.4. (Starting on page 21)

- Recommend amendment to Condition 73  
Clarify that the requirements would continue to apply to the proposed RFA3 facility repower activities

# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.6. (Starting on page 29)

- **Recommend Condition 107 (New Condition)**  
Require certificate holder to develop a specific Weed Control Plan in coordination with both Gilliam County and Morrow County
- **Recommend Condition 108 (New Condition)**  
Implementation of revegetation measures
- **Recommend Condition 109 (New Condition)**  
Measures to minimize potential impacts to state-sensitive species
- **Recommend Condition 110 (New Condition)**  
Require certificate holder to conduct two years of bird and bat fatality monitoring



# Overview of Draft Proposed Order

---

## **Public Services [OAR 345-022-0110]**

Draft Proposed Order, Section III.A.9. (Starting on page 35)

- **Recommend amendment to Condition 67**  
Require certificate holder to provide the Department executed road use agreements with both Gilliam County and Morrow County



# Overview of Draft Proposed Order

---

## **Waste Minimization [OAR 345-022-0120]**

Draft Proposed Order, Section III.A.9. (Starting on page 38)

- **Recommend Condition 111 (New Condition)**  
Require certificate holder to minimize waste generation consistent with Council's standard: ensuring turbine blades, hubs and other removed wind turbine components are reused or recycled to the extent practicable

# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.10.1. (Starting on page 40)

- Recommend amendment to condition 26  
Change the minimum blade tip clearance for wind turbines from 25 meters to 21.5 meters ` (~82 feet to 70.5 feet), and the removal of the facility megawatt output limitation
- Recommend condition 112 (New Condition)  
Require certificate holder to submit a Notice of Proposed Construction and Alteration to the FAA and ODA for modified Turbines



# Overview of Draft Proposed Order

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

Draft Proposed Order, Section III.A.11.1. (Starting on page 46)

- Recommend condition 113 (New Condition)  
Require verification of ongoing compliance with applicable State noise regulations and requirements

# Review of Proposed Order

---

**Comments Received on Draft Proposed Order:** The Department has not yet received any comments on the record of the DPO. Comments received during the comment period, will be provided to the Council electronically.

*Staff's evaluation of comments submitted prior to the comment deadline, and any recommended responses will be provided to Council in the Proposed Order.*

# Council Decision on the Proposed Order

---

## 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 G (Action Item)

## **Shepherds Flat Central: Council Decision on the Proposed Order on Request for Amendment 3 of the Site Certificate**

January 24, 2020

Chase McVeigh-Walker, Senior Siting Analyst, ODOE



# Presentation Overview:

---

- Facility Overview and Site Certificate History
- Request for Amendment (RFA) 3 Procedural History
- RFA3 Proposed Changes
- Proposed Order (Action Item)

# Facility Overview

---

**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



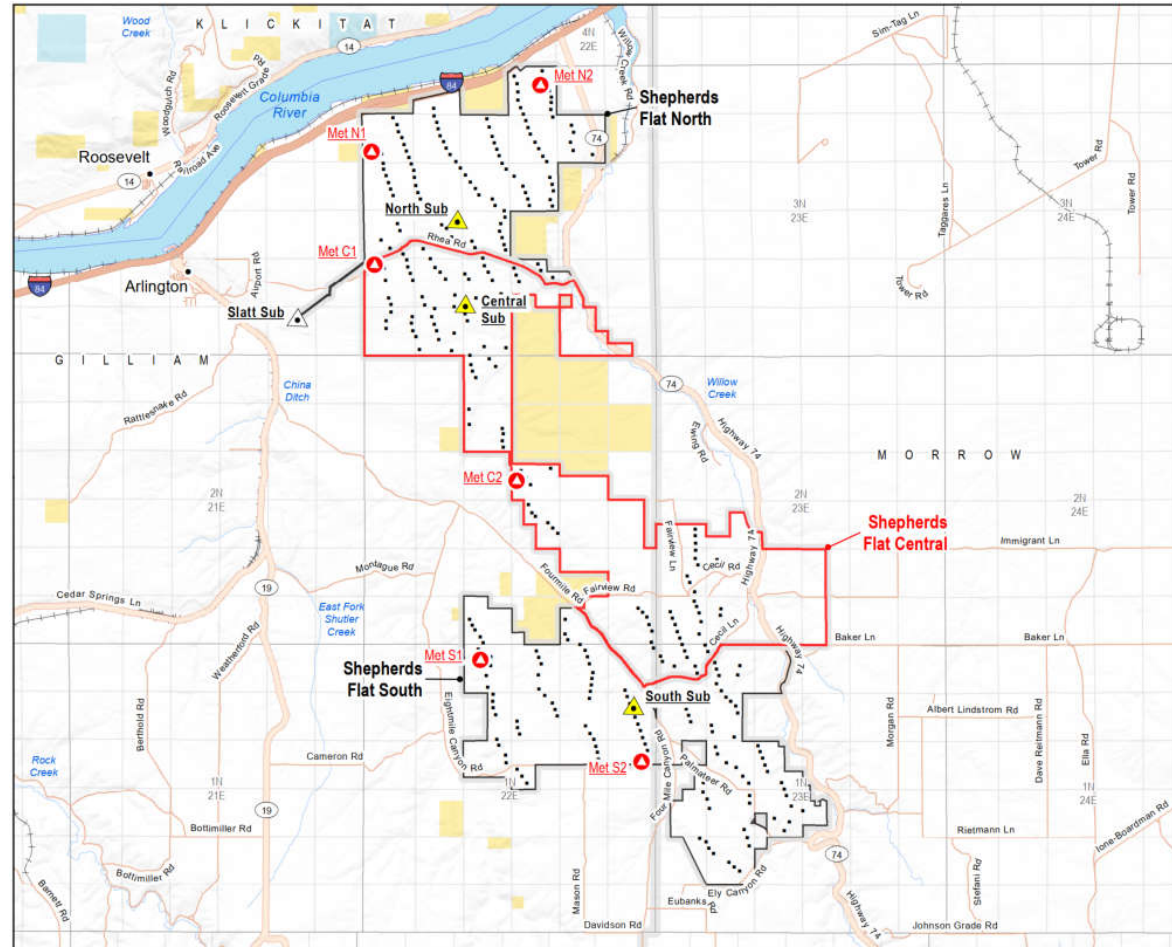
# Facility Site/Site Boundary Location 1 of 2

## Site Boundary

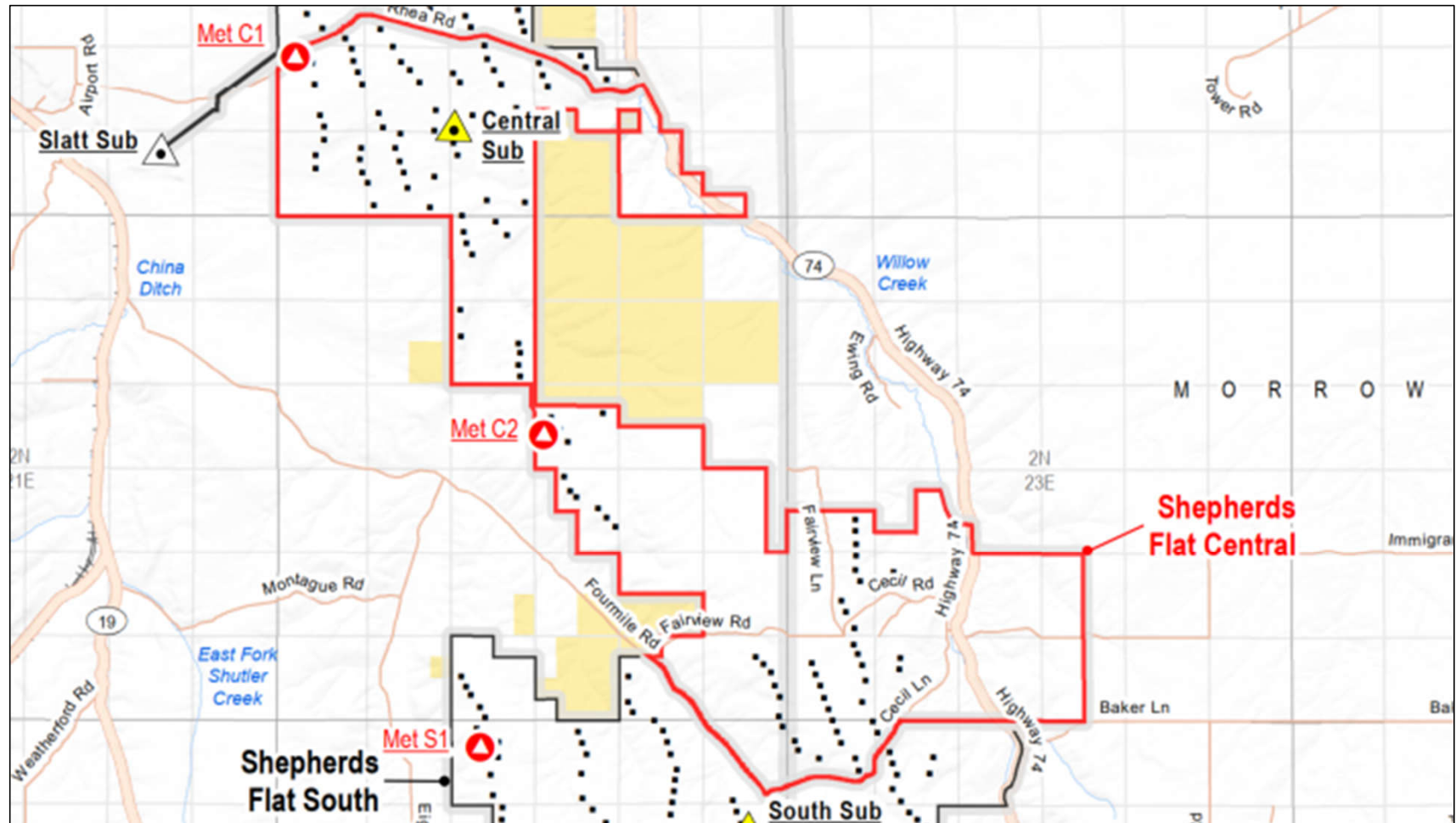
- Contains approximately 11,769 acres
- Private Land in Gilliam and Morrow counties

## 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



# RFA3 – Requested Modifications

---

- Requests the authorization to repower 114 of the 116 existing wind turbines. The remaining two wind turbines, turbines 368 and 370, have previously been repowered, as approved by Council under RFA2. The repowering would include removing and replacing the wind turbine blades, with longer blades, consequently lowering minimum aboveground blade tip clearance from 25 to 21.5 meters. \*
- Type B Amendment Review

## Condition Changes

- Condition 26

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



# RFA3 – Procedural History

Requirement	Responsible Party	Date
Preliminary Request for Amendment 3	Certificate Holder	10/07/2019
Type B Determination	ODOE	10/23/2019
Complete RFA2 Received	Certificate Holder	12/31/2019
Draft Proposed Order Issued (Type B)	ODOE	12/31/2019
Comment Period (21-days)	ODOE	1/20/2020*
Proposed Order/Public Notice	ODOE	1/22/2020
Council review of Proposed Order	EFSC	1/24/2020
Final Order/Amended Site Certificate	EFSC	TBD

\* Because 1/20/2020 is a Holiday, the Department would accept comments through 5:00 PT on 1/21/2020.

# Overview of Draft Proposed Order

---

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

- Organizational Expertise
- **Land Use**
- Protected Areas
- Retirement and Financial Assurance
- Threatened and Endangered Species
- Scenic Resources
- Historic, Cultural and Archeological Resources
- Recreation
- Siting Standards for Transmission Lines
- Removal-Fill Law
- Water Rights

# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.1. (Starting on page 11)

- **Recommend Condition 108 (New Condition)**  
Specify construction commencement deadline for the proposed RFA3 facility repower
- **Recommend Condition 109 (New Condition)**  
Specify construction completion deadline for the proposed RFA3 facility repower

# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.3. (Starting on page 18)

- **Recommend Condition 110 (New Condition)**  
Implementation of any necessary mitigation and remediation measures, or operational timing recommendations, if identified in the forthcoming foundation uprate analysis
- **Recommend amendment to Condition 62**  
Implementation of any necessary mitigation and remediation measures, or operational timing recommendations

# Overview of Draft Proposed Order

---

## **Soil Protection [OAR 345-022-0022]**

Draft Proposed Order, Section III.A.4. (Starting on page 21)

- Recommend amendment to Condition 73  
Clarify that the requirements would continue to apply to the proposed RFA3 facility repower activities



# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.6. (Starting on page 29)

- **Recommend Condition 111 (New Condition)**  
Require certificate holder to develop a specific Weed Control Plan in coordination with both Gilliam County and Morrow County
- **Recommend Condition 112 (New Condition)**  
Implementation of revegetation measures
- **Recommend Condition 113 (New Condition)**  
Measures to minimize potential impacts to state-sensitive species
- **Recommend Condition 114 (New Condition)**  
Require certificate holder to conduct two years of bird and bat fatality monitoring



# Overview of Draft Proposed Order

---

## **Public Services [OAR 345-022-0110]**

Draft Proposed Order, Section III.A.9. (Starting on page 35)

- **Recommend amendment to Condition 67**  
Require certificate holder to provide the Department executed road use agreements with both Gilliam County and Morrow County

# Overview of Draft Proposed Order

---

## **Waste Minimization [OAR 345-022-0120]**

Draft Proposed Order, Section III.A.9. (Starting on page 39)

- **Recommend Condition 115 (New Condition)**  
Require certificate holder to minimize waste generation consistent with Council's standard: ensuring turbine blades, hubs and other removed wind turbine components are reused or recycled to the extent practicable

# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.10.1. (Starting on page 40)

- Recommend amendment to condition 26  
Change the minimum blade tip clearance for wind turbines from 25 meters to 21.5 meters ` (~82 feet to 70.5 feet), and the removal of the facility megawatt output limitation
- Recommend condition 116 (New Condition)  
Require certificate holder to submit a Notice of Proposed Construction and Alteration to the FAA and ODA for modified Turbines

# Overview of Draft Proposed Order

---

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

Draft Proposed Order, Section III.A.11.1. (Starting on page 46)

- Recommend condition 117 (New Condition)  
Require verification of ongoing compliance with applicable State noise regulations and requirements

# Review of Proposed Order

---

**Comments Received on Draft Proposed Order:** The Department has not yet received any comments on the record of the DPO. Comments received during the comment period, will be provided to the Council electronically.

*Staff's evaluation of comments submitted prior to the comment deadline, and any recommended responses will be provided to Council in the Proposed Order.*

# Council Decision on the Proposed Order

---

## 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 H (Possible Action Item)

## **Council Review of Requests for Reconsideration and Rehearing; Summit Ridge Wind Farm RFA #4**

January 24, 2020

Maxwell Woods, Senior Policy Advisor

Patrick Rowe, Legal Counsel DOJ





# Background

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- Summit Ridge Wind Farm, Site Certificate Amendment 4:
  - Approved by Council at August 2019 EFSC meeting
  - Denied requests for contested case
- Appeal to Supreme Court: 60 day period, expired, no appeal
- Requests for Reconsideration and Rehearing on orders in other than contested case: 60 day period
- Three requests received
  - Friends et al
  - Fuji and Jim Kreider
  - Irene Gilbert/Friends of Grande Ronde Valley

# Council Options

---

- Options regarding the Requests for Reconsideration
  - Take action to deny all requests for reconsideration and rehearing.
  - Take action to fully or partially grant the requests for reconsideration, and conduct a contested case.
  - Do not take action. The requests for reconsideration and rehearing will be deemed denied 60 days after the requests were received (which would occur Jan 26/28).

# Petitions for Reconsideration

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- EFSC Standard for Granting Requests for Contested Case on a Site Certificate Amendment: OAR 345-027-371(9)
- Issues of the three requests:
  - Friends et al
  - Fuji and Jim Kreider
  - Irene Gilbert/Friends of Grande Ronde Valley

# OAR 345-001-0080

## Reconsideration and Rehearing: Orders in Other than Contested Cases

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(4) The Council may grant or deny a petition by summary order, and, if the Council does not take action, the petition is deemed denied as provided by ORS 183.484(2).

# AG Advice re: Petitions for Reconsideration

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Oregon Administrative Law Manual :

- “A petition for reconsideration is appropriate when, for example, the order seems **inconsistent with prior agency practice**, but does not explain why; the order seems to **misinterpret the law**; or the order **misstates the facts**. In such cases, the agency may be well advised to grant a petition for reconsideration, reanalyze the record and the order, correct any errors, fill in omissions, clarify the findings and conclusions or clarify the rationale in the order.”

OREGON ATTORNEY GENERAL’S ADMINISTRATIVE LAW MANUAL 178 (2019).

# Council Evaluation of RFA4

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- RFA4 was thoroughly reviewed and considered
- Reminder, no change to facility design or operation, only sought timeline extension request
- Proposed Order remanded to staff to address issues
- Consistency with prior practice
- Statement of facts
- Interpretation of law

## OAR 345-027-371 (9)

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*(9) After identifying the issues properly raised the Council shall determine whether any properly raised issue justifies a contested case proceeding on that issue. To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that **may [emphasis added]** affect the Council's determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. . . .*

# Friends' Argument

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“Given this use of the word “may,” the rule does not require persons requesting a contested case to prove, at the time they request a contested case, that the issues they raise *will* in fact affect the Council’s determinations of compliance with applicable laws. . . . A person requesting a contested case merely need give notice of a significant issue that *may* affect the Council’s evaluations as to compliance with the applicable law. At this early stage, such persons need not *prove*, via the introduction of evidence, detailed factual allegations, or legal arguments, that they are likely to prevail on each issue, nor even that the issues *will* affect the Council’s review. All of that must come later—as part of the contested case”.

*Friends Petition for Reconsideration*, p. 14 (emphasis in original).



# Staff's Recommended Interpretation

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- Interpret “may” to mean “in some degree likely to.” OAR 345-027-371(9):

*To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that **may [be in some degree likely to]** affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.*

# Council Authority to Interpret its Own Rules

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- Oregon courts will defer to an agency's interpretation of its own rule when "the agency's **plausible** interpretation of its own rule **cannot be shown either to be inconsistent with the wording of the rule itself, or with the rule's context, or with any other source of law**"

*Don't Waste Oregon Com. v. Energy Facility Siting Council*, 320 Or. 132, 142, 881 P.2d 119 (1994) (emphasis added).

# Plausible Interpretation

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- It is plausible to interpret “may” as “likely”
- Webster's Third New International Dictionary 1396 (unabridged ed. 2002) defines “may”, in relevant part, as to “*be in some degree likely to.*”

## Text of OAR 345-027-0371 (9)

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- (9) *After identifying the issues properly raised the Council shall determine whether any properly raised issue justifies a contested case proceeding on that issue. To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that **may [emphasis added]** affect the Council's determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. . . .*

# Context of rule

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- OAR 345-027-0371(10)(b) states:

“If the Council finds that the request identifies one or more properly raised issues that an amendment to the proposed order, including modification to conditions, would settle in a manner satisfactory to the Council, **the Council may deny the request as to those issues and direct the Department to amend the proposed order** and send a notice of the amended proposed order to the persons described in section (4).”  
(Emphasis added).

## Other law - ORS 469.405(1)

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“A site certificate may be amended with the approval of the Energy Facility Siting Council. The council may establish by rule the type of amendment that must be considered in a contested case proceeding. . .”  
(Emphasis added).

# Other Law – Supreme Court decision

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By imposing virtually no statutory procedural requirements on the RFA process, the legislature has allowed the council to develop that process largely as it sees fit. . . .

And, whereas the statutes governing the certificate application process require a public hearing and an opportunity to request a contested case proceeding, the statutes governing the RFA process do not. The most those statutes say on those topics is that the council “*may* establish by rule the *type* of amendment” that will require a contested case proceeding. ORS 469.405(1). **At this point, the council has not adopted rules *requiring* any types of RFAS to be subject to contested case proceedings.** Ultimately, because the council is not required to provide a public hearing and opportunity to request contested case proceedings in the first place, petitioners cannot complain when the council makes steps available on limited terms . . .”

*Friends of the Columbia Gorge v. Energy Facility Siting Council*, 365 Or. 371, 393-394, 446 P.3d 53, 66 (2019) (Italics in original, bold emphasis added).

# Summary

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- Court will defer to Council interpretation of OAR 345-027-371(9) if the interpretation is plausible and not inconsistent with the rule itself, the rule's context, or with any other source of law.



## Summary (cntd.)

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Plausible to interpret “may” as “likely” given:

- Text of the rule (may is not defined – dictionary definition states *in some degree likely to*)
- Context (interpretation is not inconsistent with other rules, whereas Friends is)
- Other law (ORS 469.405(1) gives EFSC discretion over handling of amendments)
- Supreme Court has noted there are virtually no statutory procedural requirements on the RFA process and the council has not adopted rules *requiring* any types of RFAs to be subject to contested case proceedings.

# Options and Recommendation

---

- Options regarding the Requests for Reconsideration
  - Take action in the form of an Order voted on by Council to deny all requests for reconsideration and rehearing.
  - Take action in the form of an Order voted on by Council to fully or partially grant the requests for reconsideration, and conduct a contested case.
  - Do not take action. The requests for reconsideration and rehearing will be deemed denied 60 days after the requests were received.
- Staff also recommends that in the Order, Council set forth its interpretation of “may” as that word is contained in OAR 345-027-0071(9), as described in this staff report, as consistent with Webster's Third New International Dictionary 1396 (unabridged ed. 2002) to “*be in some degree likely to.*”

# Agenda Item I (Information Item)

## Solar PV Rulemaking

January 24, 2020

Christopher M. Clark, Siting Policy Analyst & Rules Coordinator



# Overview

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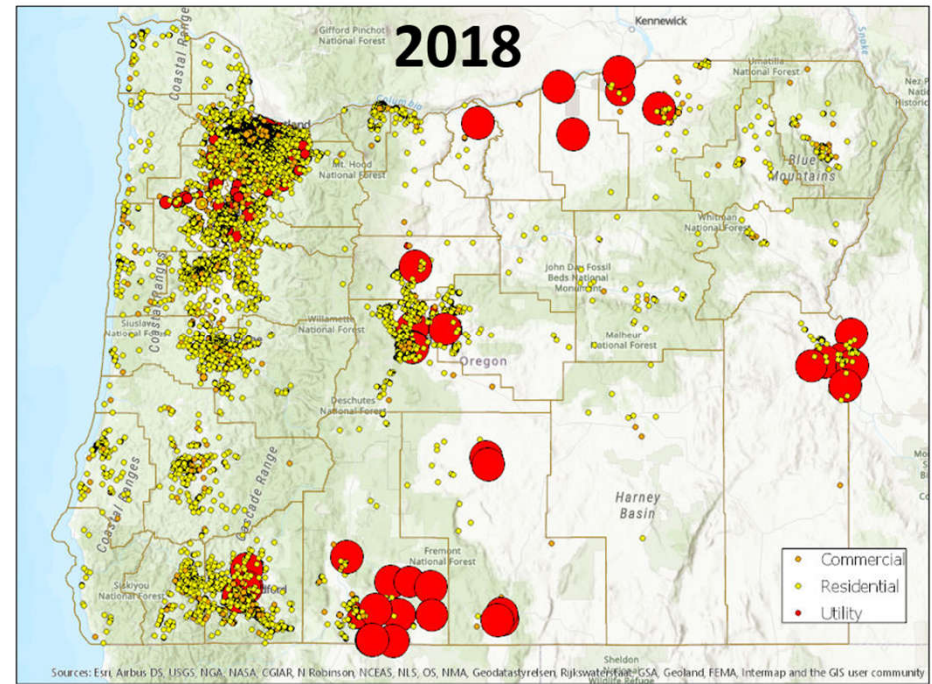
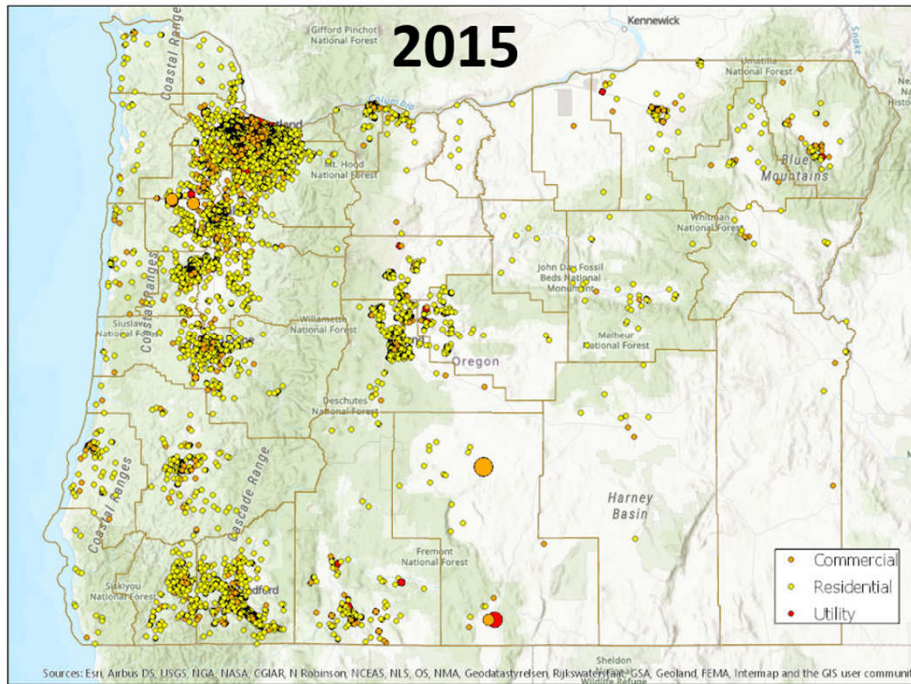
- Background
- Summary of Issues
- Recommended Council Actions

# Background

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- The Council initiated this project on June 19, 2018.
- A Rules Advisory Committee (RAC) was appointed to discuss issues, provide input to help inform staff's evaluation, and to provide input on the drafting of any proposed rule language. The RAC has met 4 times.
- Council amended the scope of the rulemaking project in the 2019 Rulemaking Schedule in response to stakeholder concerns.
- Legislation affecting the jurisdictional thresholds for solar photovoltaic facilities (HB 2329) passed in 2019 session, effective Jan. 1, 2020.

# Solar development in Oregon by sector and annual kWh production



*Note: The sizes of dots shown on maps are scaled to the amount of energy produced, not the physical footprint or land area of facilities.*

# Solar Facilities under EFSC

Facility	Type	Status	Solar Capacity (MW)	Facility Size (ac.)	County
<b>Carty Generating Station</b>	N. Gas /Solar	Approved	50	315	Morrow
<b>Boardman Solar Energy Facility</b>	Solar	Approved	75	798	Morrow, Gilliam
<b>Montague Wind Power Facility</b>	Wind/Solar	Approved	202	1,189	Gilliam
<b>Wheatridge Wind Energy Facility</b>	Wind/Solar	Approved	150	900	Morrow
<b>Bakeoven Solar Project</b>	Solar	Proposed	303	2,717	Wasco
<b>Blue Marmot Solar Energy Facility</b>	Solar	Proposed	60	TBD	Lake
<b>Madras Solar Energy Facility</b>	Solar	Proposed	63	284	Jefferson
<b>Obsidian Solar Center</b>	Solar	Proposed	400	3,921	Lake

# Summary of Issues

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- What is considered to be a “solar photovoltaic power generation facility” as that term is used in the definition of “energy facility” under ORS 469.300(11)?
- Are there issues unique to solar photovoltaic facilities that require development of specific siting standards similar to those that govern wind facilities, fossil-fueled facilities, transmission lines, and pipelines?
- Are rule changes needed to implement new opt-in provisions of HB 2329?



# Issue 1: What is considered to be a “solar photovoltaic power generation facility”

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Under ORS 469.300(11)(a)(D), a solar photovoltaic power generation facility is an “energy facility” if it uses more than:

- (i) 160 acres located on high-value farmland as defined in ORS 195.300;
- (ii) 1,280 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) 1,920 acres located on any other land.

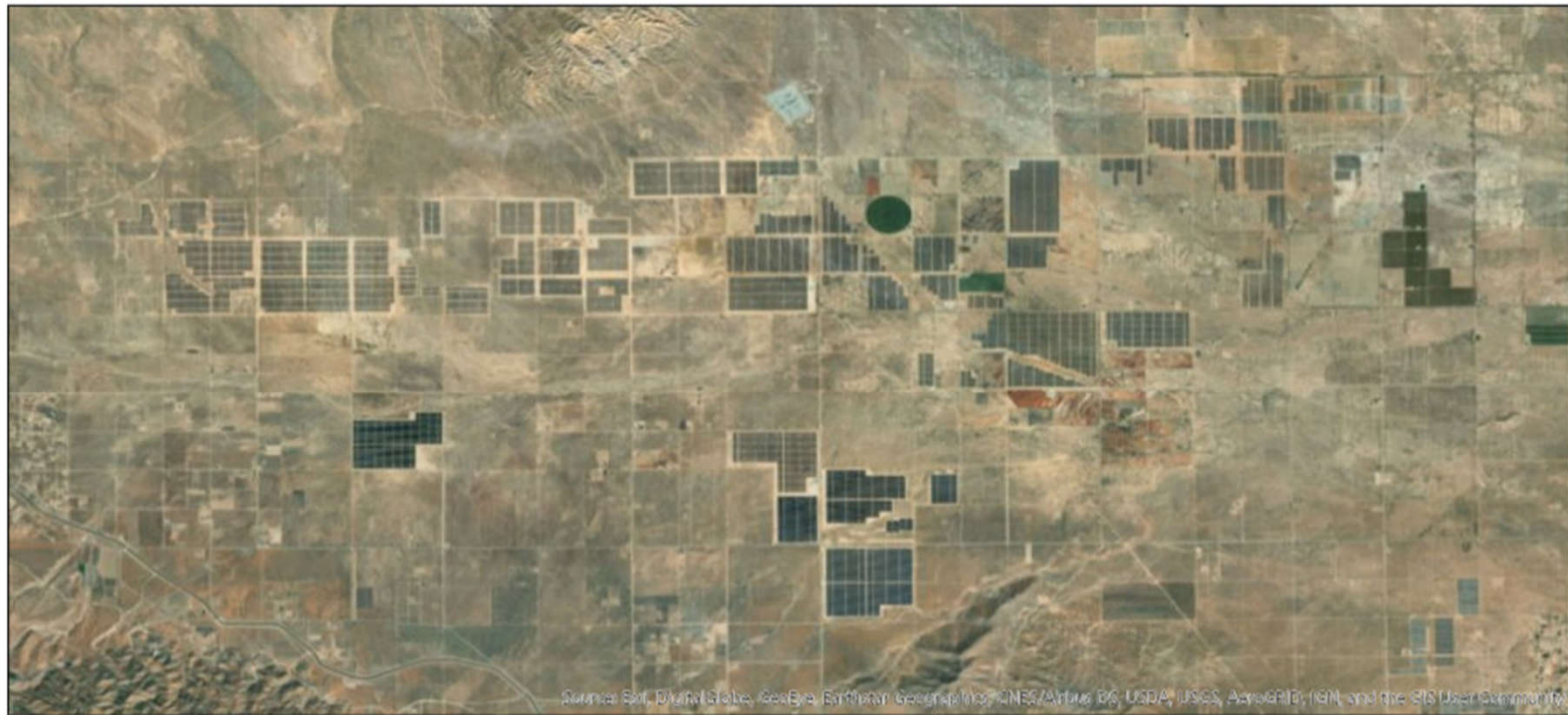
(2019 Oregon Laws, ch. 650, s. 1.)

# Challenges with Interpretation

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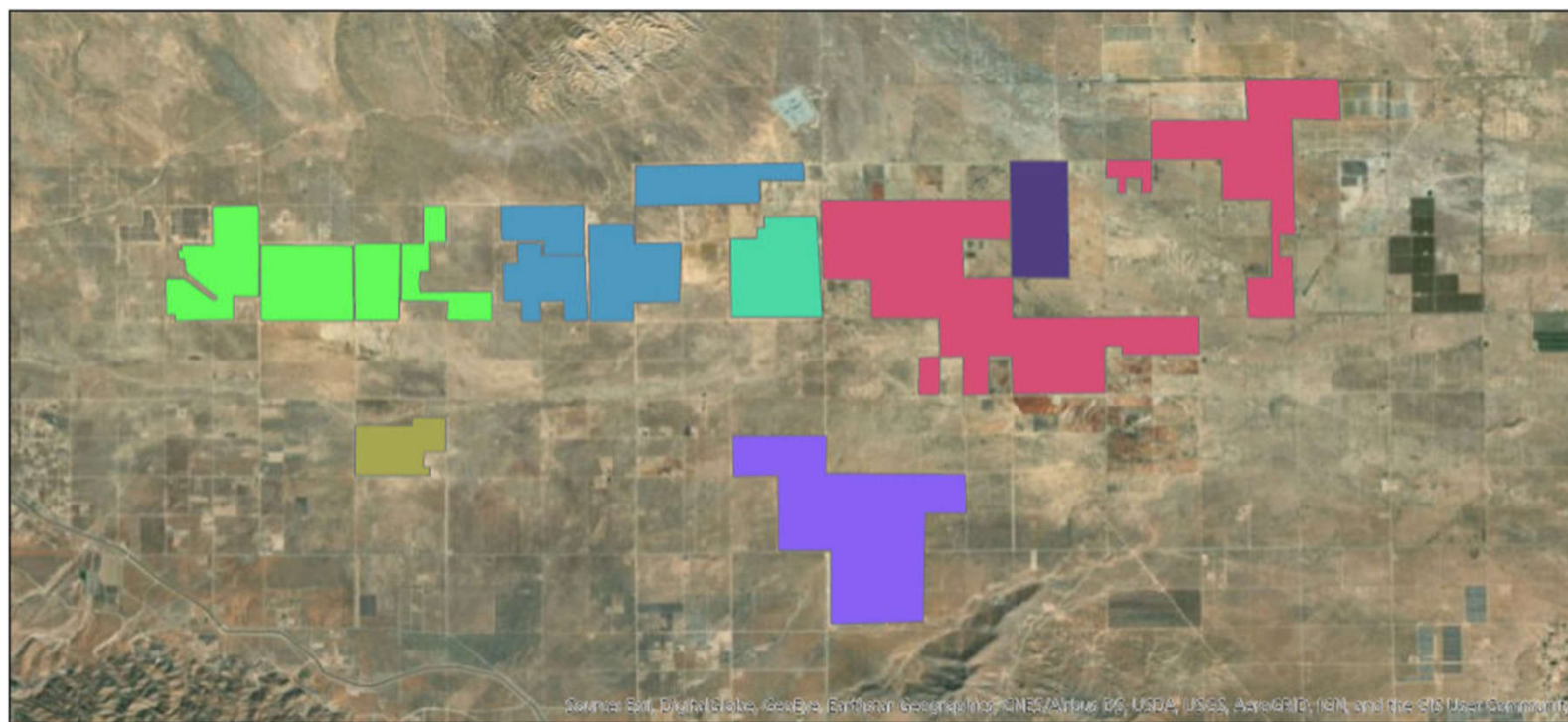
- Solar facilities are modular and can be spread across several sites.
- Projects are phased based on financing and marketing constraints.
- Facilities may be split or combined to meet customer need.
- Development is often concentrated near existing transmission infrastructure.
- Related or supporting facilities may be shared by several facilities.

# Example: Antelope Valley, CA



0 1.25 2.5 5 Miles

# Example: Antelope Valley, CA



0 1.25 2.5 5 Miles

Alpine	Antelope Valley Solar	Garland	Rosamond One
AV Solar Ranch	Astoria	Kingbird	

# Alternatives

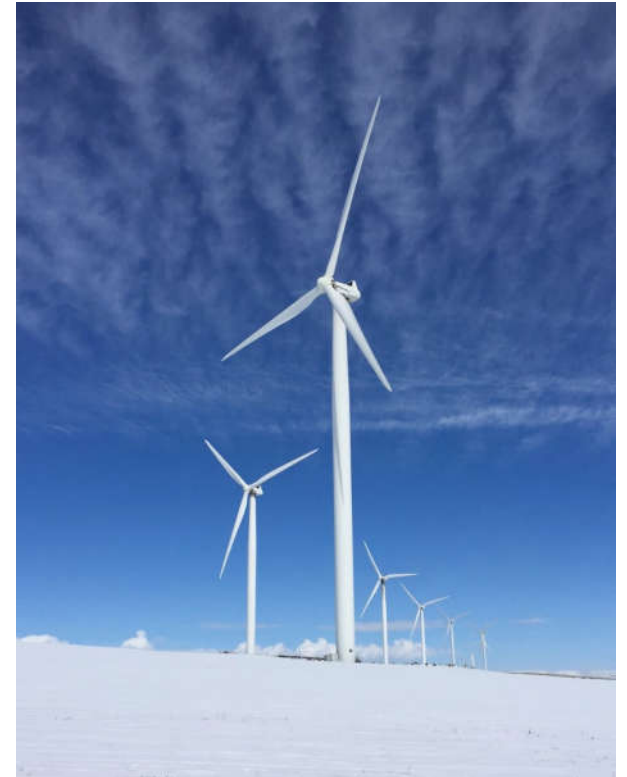
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1. Maintain current practice (case by case determinations)
2. Adopt siting guidelines based on the “15 Questions”
3. Adopt bright-line definition based on LCDC criterion by rule.
4. Adopt definition that allows for multi-factorial analysis
5. Adopt a prohibition on improper segmentation of solar facilities by rule.

# 15 Questions

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- The Council developed a list of 15 Questions in late 2000s to address similar issues for wind facilities.
- Questions relate to project proximity, ownership, infrastructure, operation, financing, and business contracting.
- EFSC never formally adopted the questions as rule or policy
- ONDA petitioned for rulemaking in 2008.





# LCDC Rule

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- LCDC adopted rules limiting the size of facilities that may be sited on EFU zoned land without an exception in 2011.
- The rules contain a definition which defines “photovoltaic solar generating facilities” as including:
  - All existing and proposed facilities on a single tract (i.e. the tract criterion.)
  - Any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited (i.e. the proximity criterion.)

# Hybrid Approach

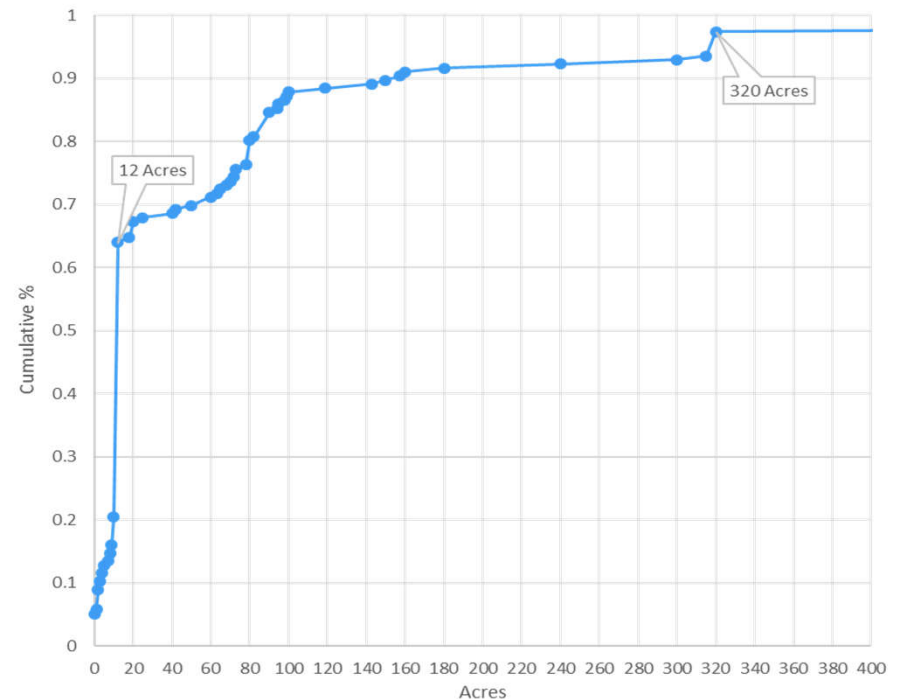
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- A rule could use LCDC rule as a “trigger” for deeper analysis similar to 15 questions.
- OPUC uses a similar hybrid approach in OAR 860-022-0070(2):  
“Co-location’ means two or more **projects that exhibit characteristics of a single development**, such as common ownership structure, an umbrella sale arrangement, revenue-sharing arrangements, or common debt or equity financing. Projects are not considered co located solely because the same person provides tax equity financing for the projects. **Co-location of projects is not permitted within a five-mile radius unless\* \* \***”



# Project Segmentation

- Project segmentation occurs when a project is broken into component parts. This may be inappropriate when done to avoid regulation.
- NEPA, CEQA, and SEPA (WA) prohibit project segmentation to avoid regulation.
- While data does not suggest project segmentation has occurred, it does show that developers do control project size to avoid regulatory thresholds.



*Cumulative Frequency of Solar Facilities by Size*

# RAC Feedback

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- Factors such as timing, proximity, uptake, operations, and impacts to land use, wildlife, and agriculture as important, but non-determinative things to look at when making jurisdictional determinations.
- Permitting status is an important consideration for regulatory certainty
- Facilities should be encouraged to share related or supporting facilities such as transmission lines, substations, and access roads to minimize impacts on land use.
- Notwithstanding the above, facilities developed in close proximity can have cumulative impacts to wildlife and agriculture.

# Recommendation

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- Staff Recommends Council adopt a definition of “solar photovoltaic power generation facility” that is consistent with the Land Conservation and Development Commission’s definition under OAR 660-033-0130(38)(f).
- The definition would act as a trigger for a multifactorial analysis of when solar projects under common ownership are considered to be an “energy facility.”

## Issue 2: Specific Siting Standards

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- The Department discussed four areas for potential specific standards with the RAC:
  - Toxicity and safe disposal of panels
  - Reflectivity and public safety
  - Ambient temperature and microclimate effects
  - Wildlife and wildlife habitat
- Most RAC members felt that the issues were adequately addressed by the existing general standards.
- Staff does not recommend Council adopt additional standards.

## Issue 3: Implementation of HB 2329

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- HB 2329 expanded provisions for which types of facilities may elect to obtain a site certificate under ORS 469.320(8).
- As of January 1, 2020, a developer or governing body of a local government may elect to defer to Council regulatory authority over certain wind facilities, associated transmission lines, and solar facilities that are not otherwise subject to Council jurisdiction.
- Staff recommends Council amend OAR 345-001-0010(18) to specify that a facility for which an election to defer jurisdiction to the Council is included in the definition of “energy facility” for the purposes of OAR chapter 345 and delete OAR 345-020-0006(3) and 345-021-0000(2).

# Issue 3: Implementation of HB 2329

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OAR 345-001-0010(18) “Energy facility” includes: ~~means~~

(a) ~~a~~A energy facility as defined in ORS 469.300, ~~including;~~

(b) ~~a~~A small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210-; and

(c) A facility for which a developer or governing body has elected to defer regulatory authority to the Council under ORS 469.320(8)(a).

## Issue 3: Implementation of HB 2329

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~~345-020-0006(3) Notwithstanding the definition of “energy facility,” a person may elect to apply for a site certificate for an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy. If such person chooses not to request expedited review under OAR 345-015-0300 or if expedited review is not granted, the person shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. An election to obtain a site certificate is final upon submission of the application.~~

~~345-021-0000(2) As used in this division, “energy facility” includes an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy for which a person has elected to apply for a site certificate under ORS 469.320(8).~~

# Staff Recommendations

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- Adopt a definition of “solar photovoltaic power generation facility” that is consistent with the LCDL rule to act as a trigger for a multifactorial analysis.
- Amend OAR 345-001-0010(18) and delete OAR 345-020-0006(3) and 345-021-0000(2) to implement statutory changes in the types of facilities that can elect to obtain a site certificate under HB 2329 (2019).
- Convene RAC to provide input on draft proposed rule language prior to the council’s consideration of proposed rules and issuance of the Notice of Proposed Rulemaking.



# Council Feedback on Draft Proposed Rules

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## Option 1

Direct staff to take draft proposed rule language recommended by Staff to RAC for review.

## Option 2

Direct staff to take draft proposed rule language recommended by Staff to RAC, with modifications.

## Option 3

Direct staff to issue notice of proposed rulemaking for changes related to HB 2329 implementation only.

BREAK

# Council Deliberation



# Adjourn

