



ENERGY FACILITY SITING COUNCIL

Hanley Jenkins, Chair ■ Marcy Grail, Vice-Chair ■ Kent Howe ■ Mary Winters ■ Jordan Truitt ■ Cynthia Condon

Energy Facility Siting Council August 21, 2020 Meeting Minutes

**Friday, August 21, 2020 at 8:30 a.m.
Webex Teleconference Meeting**

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The meeting materials presented to Council are available online at: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Friday, August 21, 2020 – Webex Teleconference

Call to Order: The meeting was called to order at 8:30 a.m. on August 21, 2020 by Chair Jenkins.

Roll Call: Council Chair Hanley Jenkins, Vice Chair Marcy Grail, and Council Members Cynthia Condon, Kent Howe, and Jordan Truitt were present by teleconference.

Oregon Department of Energy representatives present by teleconference were Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor Maxwell Woods, Rules Coordinator, Christopher Clark, Division Assistant, Michiko Mata, Operations & Policy Analyst, Wally Adams, Senior Siting Analysts Sarah Esterson, Kellen Tardaewether, and Katie Clifford attended by teleconference. EFSC Counsel Patrick Rowe of the Department of Justice was also present by teleconference.

A. Consent Calendar (Action Item) – Approval of minutes, Council Secretary Report, and other routine Council business.

Agenda Modification

No agenda modifications

July Meeting Minutes

Council Member Howe motioned that the Council approve the minutes of the July 20, 2020 special meeting minutes as presented.

Council Member Truitt seconded the motion.

Motion carried.

Chair Jenkins requested Council postpone approving the minutes from the July 23-24, 2020 meeting until the September meeting to allow time to review since they just received them.

Consensus received.

Staffing/Council Updates

Introduction of Wally Adams, the new Operations and Policy Analyst started on August 3rd. Excited to have him on board and he is already working with Duane Kilsdonk on a process improvement effort with the Compliance program.

During the Agenda Item I Secretary Cornett announced that Maxwell Woods was taking over the Nuclear Safety & Emergency Preparedness Division from Ken Niles as its new Assistant Director starting September 1st. Secretary Cornett thanked Mr. Woods for all of his contributions to the Division and looked forward to working with him in his new role. Council members also expressed their appreciation.

Project Updates

Bonanza Energy Facility - On August 7th the Department received a Notice of Intent for a new project – the Bonanza Energy Facility. The project would be located in Klamath County about a mile southeast of the town of Bonanza and about 26 miles east of Klamath Falls. The project would consist of:

- Between 150 – 300 MW of solar PV panels
- An 8 mile 500 kv transmission line
- Up to 1,100 MW of battery storage system

This would be by far the largest battery storage request received and would be housed in 11 separate enclosed structures that are 600 feet in length by 600 feet in width and up to 30 feet in height, which is equivalent to 3.95 million square feet or 91 acres. In total, the project would be located on approximately 2,733 acres or 4.2 square miles.

Katie Clifford is the project lead and there is an established project page with the Notice of Intent materials and the project boundary is located on the online mapping program. Public and reviewing agency notice has not yet been sent out.

Wildlife Reporting Update - There are five EFSC wind facilities that implement Wildlife Monitoring and Mitigation Plans that include a requirement to provide an opportunity for public comment and review of ongoing wildlife reporting. Those facilities included: Biglow Canyon Wind Farm, Klondike III Wind Project, Leaning Juniper IIA Wind Power Facility, Leaning Juniper IIB Wind Power Facility, and Stateline Wind Project. 2019 annual compliance reports for each of these facilities were received in April 2020 and include these wildlife reports. These reports are available for public review on the individual project webpages as well as the Council's webpage and there is a 60 day comment period ending on October 20, 2020. This information will also be included in the Monthly Siting Report.

Ongoing wildlife monitoring for these wind facilities include long-term raptor nest surveys, Washington Ground Squirrel surveys, and incidental wildlife reporting. Long-term surveys are conducted every 3-5 years, depending on the facility. Long term raptor nest surveys are on a 5-year schedule, with the next year being 2022. Long term WGS surveys are on a 3-year schedule with the next surveys occurring in 2020. 2019 was not a long-term survey year for any of the 5 wind facilities, with reporting limited to incidental wildlife reporting.

Comments may be submitted to Duane Kilsdonk, Siting Division Compliance Officer via email.

Wheatridge Renewable Energy Facility II Amendment Determination Request

On August 6th the Department received an amendment determination request from NextEra Energy Resources, LLC, the parent company for Wheatridge Renewable Energy Facility II related to whether or not a proposed change required an amendment.

The Wheatridge Renewable Energy Facility II is a 550 megawatt (MW) wind and solar energy facility, with 300 MW of wind facility components currently under construction within Morrow County.

The certificate holder proposes to modify the site boundary to include 4 new acres, within approximately 400 feet of the existing site boundary, in Morrow County to use an alternative route for construction and operation of an underground collector line (between wind turbines 92 and 111), with a maximum temporary disturbance footprint of 1,500 feet (length) by 60 feet (width). The area where the original collector line route was proposed would equivalently be removed from the site boundary.

The area within the existing site boundary area, where the underground collector line was planned, was determined unsafe for trenching and boring equipment due to slopes with grades exceeding 15 feet.

On August 14th the Department confirmed, based upon review of the ADR and supporting analysis, that a site certificate amendment was not required for the proposed site boundary modification.

Also on August 14th the ADR and staff's determination was provided on the Department's project webpage, a courtesy email announcement was sent and Mr. Cornett sent Council members an email that included the request and staff's determination.

Pursuant to OAR 345-027-0357(6), the certificate holder or a Council member may request that the Department's determination be referred to Council for concurrence, modification or rejection.

Wheatridge Renewable Energy Facility II Amendment #1 – On August 18th the Department received an amendment request from NextEra Energy Resources, LLC, the parent company for Wheatridge Renewable Energy Facility II of a request for an amendment and a request for Type B review of that amendment. The Amendment would split Wheatridge Wind Energy II into three separate site certificates.

- Wheatridge Renewable Energy II – The existing site certificate would retain 200 MW of wind and 30 MW of Battery storage
- Wheatridge Renewable Energy III – Would be a new site certificate and have 150 MW of Wind and distributed battery storage
- Wheatridge Renewable Energy Facility East – Would be a new site certificate and have 200 MW of Wind and 20 MW of battery storage

The amendment¹ does not propose to change the site boundary, the location of any of the approved facilities or alter any of the approved facilities.

NextEra would remain the parent company for each of the three site certificates.

We have not yet included request for Amendment #1 and the associated Amendment Determination Request on the project page. Sarah Esterson is the project lead.

Future Meetings

September 24th and 25th - Secretary Cornett stated they would definitely need Friday September 25th, and that all Council members except Chair Jenkins have indicated their availability.

Vice Chair Grail asked if the meeting would be virtual or in-person.

Secretary Cornett confirmed it would be virtual.

Availability was confirmed.

October 22nd and 23rd - An October meeting is expected to be needed and all Council members indicated their availability.

Availability was confirmed, no changes.

B. [8:45 a.m.] Request to Transfer Ownership of Wheatridge Renewable Energy Facility I Site Certificate (Hearing)¹

- 1. Transfer Hearing (Hearing Opened at 8:55 a.m.):** The Council conducted a transfer hearing on the request to transfer ownership of the Wheatridge Renewable Energy Facility I site certificate from Wheatridge Wind Energy, LLC to Portland General Electric. The purpose of the transfer hearing is to provide the general public an opportunity to provide oral comments on the transfer request to Council.
- 2. Council Review and Decision on Request to Transfer Site Certificate (Action Item):** Sarah Esterson, Senior Siting Analyst. Council received a presentation from staff on the transfer request, comments received on the record of the transfer request, and will take action to approve or deny the transfer request. If approved, Council will issue an amended site certificate for the new certificate holder.

Chair Jenkins asked if any representatives from Portland General Electric had any comments.

¹ Audio for Agenda Item B = 00:17:05 – August 21, 2020

Ms. Amt stated they had no comments at that time.

Public Comments

Chuck Little supported the transfer of the Wheatridge I Facility to Portland General Electric. He stated PGE is a long running Oregon company, and has a good standing. They follow the EFSC rules, and this would keep the energy in Oregon.

Chair Jenkins closed the hearing at 9:00 am.

Council Member Truitt asked how the operation of the facility would be handled? If PGE is the holder of the certificate and operator of the facility how much is done in house by PGE or will they be using a third party and contracting some of the work out, including the daily operations?

Ms. Esterson stated it would be a mix, but had the understanding PGE would continue working with Nextera and may also have some contractors. There are existing conditions requiring that the certificate holder provide to the Department the qualifications of any design, construction, engineering and operational contractors to ensure adequate expertise.

Council Member Truitt stated that the condition satisfied his question if contractors were being evaluated to ensure they have appropriate expertise and experience to work in the facility.

Council Member Howe moved that the Council approve the request to transfer ownership of the Wheatridge Renewable Energy Facility I site certificate from Wheatridge Wind Energy, LLC to Portland General Electric.

Vice Chair Grail seconded.

Motion carried.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

- C. Rulemaking to Clarify Standard for Contested Case Requests for Type A Amendments, Council Review of Comments and Possible Final Decision – Continuation (Action Item)**² Christopher Clark, Rules Coordinator. The Council continued its review of public comments received on the proposed amendment of OAR 345-027-0371(9), and considered the adoption of permanent rules. For more information visit the [Rulemaking page](#).

Mr. Clark provided an overview the amendment review process.

Council Member Condon asked if someone attended a public hearing, and they didn't raise an issue at the hearing they would not be allowed to participate in the contested case?

Mr. Clark confirmed that was correct. In order to preserve their right to participate they must comment on the record and raise one valid issue on the record.

Mr. Clark provided background on and a procedural history of the rulemaking project, and reviewed staff's evaluation of issues raised in public comments. Staff recommended Council make no changes to the rulemaking notice or proposed rule language in response to comments, except to replace the word "that" with the word "whether" as recommended in comments from Friends of the Columbia Gorge.

Council Deliberation on Adoption of Proposed Rules

² Audio for Agenda Item C = 00:42:50 – August 21, 2020

Vice Chair Grail stated that she believed staff has been clear on their intent, and was concerned with public perception that staff and Council were not being forthright. She believed the rules have allowed certain things that didn't exist before, and she struggled with reconciling the gap between where she felt they were and public perception.

In response to concerns about the rulemaking caption raised in comments, Council Member Howe stated he felt this was a clarification verses a modification of the language, and they were just clarifying the meaning of "may affect". He expressed preference for adopting the proposed "reasonably likely" language because it is similar to language that exists in OAR 137-003-005(7)(a), and is less vague than "may affect." He felt the Council could use it's discretion to determine what was reasonably likely without quantifying the likelihood meant by "reasonably likely." Council Member Howe also agreed with replacing the language "that" with "whether".

Council Member Condon shared Vice Chair Grail's thoughts and comments, and agreed with Council Member Howe that "that" should be replaced with "whether." She stated she didn't support the change of "may" to "reasonably likely" because she didn't believe it was necessary, and because the proposed rule language may make it difficult for parties to know what was considered "reasonably likely" as the Council's membership changes. Council Member Condon strongly supported the change from "that" to "whether."

Council Member Truitt stated that he did some research on the differences between the words "may" and "reasonably likely" and felt the issue had been sufficiently covered. He raised concerns with the time and resources put into the project, but that he had not come to a solid determination on the issue, but was on the same page as Vice Chair Grail and Council Members Howe and Condon.

Chair Jenkins made comments in support of the proposed rule change.

Chair Jenkins stated in relation to comments questioning if the proposed change is a modification or a clarification of the existing rules, the issue is whether giving the public notice that they are pursuing a rulemaking process giving them an adequate opportunity to participate. He felt the 399 pages of testimony received by the Council demonstrated that the public had received the message.

In response to concerns about the proposed rule, Chair Jenkins explained that he felt the core of the issue relates to where in the amendment review process Council evaluates a request for a contested case. He explained that he didn't believe this was an opportunity for a reconsideration of the entire draft proposed order, but was a chance to reevaluate Council's determination of compliance with the standards and the associated conditions of approval. He stated that if a commenting party believes Council didn't get it right, the commenting party needs to explain how and why. Chair Jenkins stated that there needs to be good reason to challenge the Council's evaluation, that there needs to be a likelihood that the challenge is going to affect the Council's determination

Chair Jenkins believed that he disagreed with commenters who asserted that evidence needed to meet the proposed standard could only be obtained through the contested case, because it would be against the applicant's best interest to withhold evidence from the record.

He stated he did not oppose changing the word "that" to "whether." Chair Jenkins also shared concerns with the amount of time spent on this issue and felt that it was appropriate for the Council to make a decision, and not delay this because it's a difficult decision to make.

Council Member Howe stated Chair Jenkins raised a good point by putting in the context of their decision making process and agreed that there needs to be a higher threshold, as they've already evaluated all the standards as they go through their decision making process so the issue will need to be "reasonably likely" to affect the Council's decision verses "likely."

Vice Chair Grail stated it's important that if they are going to make a decision they acknowledge the opportunities for public participation which didn't exist in previous versions of the rules. She stated that she was not unwilling to make a decision, but was perplexed on how the gap between the Council and the public had become so large. She agreed that making a decision today was important.

Council Member Condon asked if Council has the opportunity to review requests for contested case hearings, and has the opportunity at that time to deny the request for the contested case.

Chair Jenkins stated that there are two paths at that point, one is to make the change themselves as part of the proposed order before the final order, which then avoids the contested case process for that issue because it was resolved. The other is to evaluate the contested case request and determine whether or not to accept the request.

Council Member Condon asked if it was the Council making the determination, if replacing the word "may" with "reasonably likely" may change the determination. She stated that the Council knows what "may" means, as it's been in the record for years.

Chair Jenkins stated that the benefit to clarifying the rule is so the public understands as well as future Council members, that there is a standard for moving to a contested case, and that the proposed standard here is that an issue is "reasonably likely" to affect the determination they've already made, instead of it being an automatic contested case.

Mr. Clark stated that Chair Jenkins was correct. Mr. Clark clarified that there are two ways for Council to adopt rules. One is through the formal rulemaking process, and the other is through establishing precedent through an order in a contested case. He stated his belief that the Council had already established the standard proposed in the new rules in its previous orders on contested case requests, and that the rule would clarify how requests are being evaluated by Council for the Council's stakeholders.

Council Member Condon stated that had there been comments on the record in support of this change, maybe it would have been more clear to her, but since most of the comments were in opposition it gave her pause.

Council Member Truitt stated that he felt satisfied with the information on the record regarding this subject, and was prepared to move forward with a motion.

Council Member Truitt moved to adopt the revisions to OAR 345-027-0371(9) to clarify the standard for Contested Case requests for Type A Amendments as presented by staff to include the change to replace "that" with "whether".

Vice Chair seconded the motion.

Council Member Condon asked if there was an opportunity to split the two changes, changing the word "may" to "reasonably likely" and changing "that" to "whether"?

Chair Jenkins deferred to Council Member Truitt since he made the motion.

Council Member Truitt deferred to Secretary Cornett.

Secretary Cornett stated it was entirely up to the Council, and if they wanted to split them up for the record it was up to them. The staff didn't have a recommendation, but they could split them if they wanted.

Chair Jenkins called for a vote on the motion.

Motion carried.

Council Member Condon clarified she voted “no,” with all due respect to the work done.

Secretary Cornett thanked Council Member Condon for the clarification.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

D. [10:30 am] Council Review of Obsidian Solar Center DPO (Information Item)³ – Kellen Tardaewether and Sarah Esterson, Senior Siting Analysts continued the presentation of the draft proposed order (DPO) for the Obsidian Solar Center, comments received during the DPO comment period, and applicant responses to comments on the DPO, which extended from March 12, 2020 through July 20, 2020 (comment period closed at the conclusion of the public hearing on July 20, 2020). The deadline for the applicant to respond to comments on the DPO was July 22, 2020.

Issue: Impacts of Mammal Displacement on Adjacent Agriculture

Council Member Condon stated in the summary that the rodent increase was expected to subside within 6 months. Expected, what if the expected didn’t happen and there is rodent damage to adjacent land, what is the remedy?

Ms. Esterson stated that in regards to rodent displacement the applicant had their consultant, Foster’s Consulting evaluate the distance where the displacement would occur, and it wouldn’t exceed half a mile. Any increase of rodents would also increase predators so it would be a natural subsiding occurrence. After speaking with ODFW they stated the land owners in the area know how to deal with rodent issues as a current problem, and any changes to rodent activity would be hard to connect directly to the facility. She said they were acknowledging this issue, but they weren’t expecting any significant increase.

Council Member Condon stated the elk comments made at the hearing were interesting and if asked the people in the area did not know about the ODFW programs for elk damage support? With so many comments regarding the elk, she wondered if they just didn’t know about the program. Is the applicant, ODFW, or the Department providing information regarding that?

Ms. Esterson stated she felt it would be incorporated in the analysis in response to this issue in the proposed order. So it would be provided to some extent.

Ms. Tardaewether added that there is guidance in rules to commenting on the DPO, which requires raising issues with sufficient specificity. Council rules state an individual must present facts on the issue, and any analysis they include is in response to the comments. They didn’t receive a study, reference, or basis of existing rodent or elk use on adjacent agricultural lands.

Council Member Condon stated the expectation would be “unlikely” and that adjacent property owners now feel like they had to survey to prove there is damage. That it seemed odd they would have to present a comment with that sort of specificity.

Ms. Tardaewether stated she agreed, how do you provide such evidence with a projected impact.

Council Member Condon felt it would be a burden to an adjacent property owner, that they didn’t expect to provide.

³ Audio for Agenda Item D = 01:48:51 – August 21, 2020

Issue: Noxious Weeds

No comments from Council

Issue: Water Use/Availability, Water Supplier Permits

No comments from Council

Issue: Water Use/Availability, Wells

Chair Jenkins asked if staff anticipated a response from water resources?

Ms. Tardaewether replied that she expected to hear back from them today, but haven't yet.

Chair Jenkins said the applicant stated if they weren't able to get their dust control water from the District, they would go to La Pine. However, they don't have an agreement with La Pine and do we know if La Pine can provide the water?

Ms. Tardaewether replied that they didn't and originally asked the Water Resources Department about that, and La Pine has more water right permits than the water District. The applicant didn't provide any additional information or permit numbers to evaluate, other than they would go to La Pine for water if the District didn't have enough. They don't have any evidence to support or deny La Pine as a viable source for the project.

Chair Jenkins asked if there was a way to deal with this with a condition of approval if they get a response from the District that they are not able to provide? Somehow they need to address this issue because 30 million gallons of water for dust control is important.

Ms. Tardaewether confirmed, and that they can add a condition that the applicant will need to provide evidence that they can meet their water use needs from the City of La Pine, or add evidence they can meet their water needs from the City of La Pine as one of the options included in the condition.

Chair Jenkins stated this was their opportunity to comment prior to the final order, and he wanted to make sure it was addressed in an approval condition.

Ms. Tardaewether agreed. Once the record closes there is a provision that allows the Department to engage in what's called "agency consultation". That is how they will add this as an attachment to the proposed order.

Chair Jenkins asked if Council needed to take any action or if it was taken care of in the order?

Ms. Tardaewether confirmed it was part of the order, asking Ms. Esterson if she agreed.

Ms. Esterson confirmed.

Secretary Cornett stated because the comment was on the record and they were responding to the comment, they have the ability to work with other Agencies to respond to the comment. Staff felt comfortable they could proceed with this issue.

Chair Jenkins stated as long as they hear back from the Water Resources Department and know where the water is coming from.

Ms. Tardaewether confirmed.

Issue: Success of Juniper Treatment, Mitigation Ratio, and WLIP Agreements

Chair Jenkins stated the issue really is the winter range and big game, which happens January through March. The standard is an ODFW standard which is a habitat category 2, and may require no net loss of habitat quality and quantity and provide a net benefit. His presumption of net benefit is 51 percent constitutes a benefit, beyond the current situation. However, a 2:1 compensatory mitigation ratio is not justified. The applicant is proposing 4,304 acres of a mitigation ratio, and ODFW wants essentially another 3,000 acres. Which was pretty substantial, it's more than what he would consider a "net" benefit. If ODFW believed the habitat mitigation plan wasn't adequate, that is where they need to make the correction. However, that is not what was said, they said they want a cushion. He didn't think 3,000 acres was just a cushion. He felt if a habitat mitigation plan was not adequate then it needed to be improved, which is not what he's hearing from ODFW. The second point is they want to prohibit uses within the agreements, and he didn't believe it was appropriate. He felt that ODFW was over-reaching by requesting eliminating hunting access, winter recreation, and quiet enjoyment access to the land owners. He stated it hasn't been proven that those type of uses have an impact on big game winter range. Recreation doesn't usually occur in the winter, hunting access occurs in the fall, and quiet enjoyment is tough to prove impact on wildlife use on a landowners property. He agrees with the applicant and the Department that these items should not be included in the land owner agreements. He also felt the 1.2:1 was an adequate mitigation ratio.

Decommissioning/Financial Assurance

No comments from Council

Consistency with Lake County Comprehensive Plan Goals and Policies

No comments from Council

Council Discussion

Council Member Howe stated he felt comfortable with the wind erosion, juniper treatment, decommissioning, financial assurance, and the Lake County comprehensive plan and the conditions identified to ensure the project would not have any adverse impacts on agricultural uses. The one area he was uncomfortable with was the elk and rodent displacement issue, he was aware that ODFW had been involved with a plan, but they said it shouldn't occur more than a half a mile away. However, a member of the public testified that has a ranch that borders approximately two and a half miles of the proposed energy site. If they phase the developed the six month displacement timeline could get extended, and he wondered if staff had any comments regarding monitoring for the displacement and rodents invading the adjacent properties. Same for the elk as well.

Ms. Esterson stated that part of the issue was they didn't have facts to evaluate, they were aware that displacement could be an issue, but unsure of the significance of it is unknown. They don't know the current capacity at the site, what would the impact be with certain activities once it's developed, or how do you tie the impact to the facility. The challenge is from ODFW's perspective the mitigation has been evaluated, this is a different issue, they don't evaluate dislocation under their current policy. This is more of an indirect impact, if it could be measured. ODFW said they have already addressed the issue and provided mitigation through their Elk Damage program, and didn't recommend any duplication of requirements. There was not any support when staff took this to the reviewing agencies.

Council Member Howe asked if there was any experience with the use of elk and rodent displacement from other solar facilities?

Ms. Esterson stated they didn't have any constructed operating solar facilities at this time, and from what she can recall this is the first time they've looked into this issue.

Ms. Tardaewether stated for the solar facilities, even for amendments, this is the first time they've evaluated this issue. Also, the Council's process is evidentiary based, and they could use staff's outreach to reviewing

agencies to help evaluate the issue. Ms. Tardaewether referred to Council Member Condon's statement about the adjacent land owner being able to project what a future impact may be, but just by raising a potential issue it doesn't necessarily represent facts. At what point do they limit the revisions they make for potential issues in response to this issues.

Vice Chair Grail stated they would be remiss if they didn't do the work to make sure agencies they rely on understand. That this is not a one and done issue, it will keep coming back up. The State has set goals, and if they aren't adapting to the needs of the ones impacted most, then are they really doing their job? She asked that if staff didn't get a clear answer from ODFW to encourage the applicant to continue meeting and working with the community members, elected officials, and anyone else they may need to involve to be sure nobody is left hanging. You won't know the damage until it happens, and their ability to recover is much more difficult as their livelihoods depend on it. She mentioned the impact on hunting, she stated they need to take every effort possible and use the resources available. She didn't think it was reasonable that the landowners have to do a bunch of research as they aren't the ones trying to build, the applicant is, so the burden should be on them.

Council Member Condon stated she couldn't agree more with Vice Chair Grail, and Council Member Howe. She's struggling with these issues. The Council has financial assurance standards for decommissioning to protect the State. The landowners have some risk related to migration of rodents and elk, yet there is no financial protection for them. She asked if there was a method that gives the landowners recourse if there is damage to their crops. She realizes that ODFW has the elk damage program, so rodents might be the bigger risk. She is also struggling with ODFW's 2:1 ratio, and it seemed it was overreaching as Chair Jenkins stated. She asked if staff could provide some more information on ODFW's insistence for this ratio.

Ms. Tardaewether replied based on the ODFW's April 24 and May 18 comment letters, and Ms. Reif's oral comments at the DPO hearing. The ratio is to help with the risk of failure. At the 1.1:1 you have little room for error to achieve the success criteria in the habitat mitigation plan. That reason is a primary driver, and they maintain a higher ratio would account for the loss of functions and values of the native sage brush.

Council Member Condon thanked Ms. Tardaewether, and stated she did read that information in the staff report. However, she still felt there was a large jump in the ratio and if failure was expected then maybe that's reasonable. There was no evidence proving failure happens often, so she asked if there was any more experience with it?

Ms. Tardaewether noted a basis is provided in a comment letter that outlined the success of Juniper treatments and weed invasion. This reiterates the point of why success may be more difficult to justify the higher ratio to allow room for failure. However, it was not enough evidence to go to a 2:1 ratio, the Department is not recommending that. The intent of the noxious weed plan, the methodology associated with weeds, and the success criteria associated with the Juniper treatment program are all discussed in the habitat mitigation plan (HMP). Ultimately all parties including ODFW seemed to be okay with the HMP, so it seems there is a disconnect to be satisfied with the mitigation parcel.

Ms. Condon confirmed it was that disconnect that troubled her.

Secretary Cornett added that they've received concerns regarding adjacent farm use and the potential impacts. Clearly they need to look further into it and into Council's comments. What the Department comes up with, he couldn't say. He could commit to reaching out to other agencies like the Oregon Department of Agriculture and Oregon State Extension to see if there are any mechanisms or ideas they could implement.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

E. [12:45 p.m.] Council Appointment Process Options for The Climate Trust’s Oregon Offset Committee (Information Item/Possible Action Item)⁴ – Todd Cornett, Division Administrator. The Council received an overview of its options for filling a vacancy on the Oregon Offset Committee which approves offset purchase contracts where The Climate Trust potentially intends to use monetary payment funds to purchase offsets consistent with the Council’s carbon standard.

Chair Jenkins stated they should start with if any of the Council Members were interested or not.

Council Member Truitt stated he was interested.

Council Member Condon stated she was also interested as she was intrigued of the work that Committee did.

Secretary Cornett stated Mr. Zakreski was on the line so if Council had any questions for him now was the time to ask him.

Council Member Truitt stated he didn’t have any real questions other than trying to determine if he had the time to manage the extra duty.

Council Member Condon asked if they had a preference of one of the three options or if there was a benefit to having a Council member participate.

Mr. Zakreski outlined the history of Council members serving on this committee, but he couldn’t say any advantage just that it’s neutral.

Council Member Condon asked if he was looking for any expertise for someone interested in serving on this committee?

Mr. Zakreski stated not necessarily, but considering how the offset market has evolved the majority of the projects aren’t energy related. They are usually land based, and usually in forestry or ranching sectors. They have people with various backgrounds like financial, forest management, land trust industry, and they even have an attorney that specializes in renewable energy contracts. They are set up to have most areas covered that they may come across.

Chair Jenkins asked if there was an advantage to having a board member serve on the Offset Committee?

Mr. Zakreski replied that historically Committee and Board Members were one in the same. That was because the Climate Trust was formed in response to the standard. Their mission and activities have diversified, so this allows interested parties to participate without the larger time constriction, making it more accessible.

Chair Jenkins stated an advantage to having a Council member serve on the Committee is it gives a direct link between the Council and the Oregon Offset Committee. He felt this would create a bridge to provide information from the Offset Committee back to Council.

Mr. Zakreski offered to put Council Member Condon and Truitt in touch with the Chair to help answer any questions they had.

Council Member Truitt & Condon stated that would be helpful.

Chair Jenkins recommended the Council did not make a decision on the options until the September meeting.

Secretary Cornett confirmed and he’d be in contact prior to the September meeting if either of the Council members were interested.

⁴ Audio for Agenda Item E = 03:38:09 – August 21, 2020

F. Public Comment Period⁵ – This time is reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

Damon Motz-Storey, Healthy Climate Program Director, OR Physicians for Social Responsibility (Audio begins 00:00:06)

Mr. Motz-Storey spoke in opposition of EFSC's intent to allow Perennial Wind Chaser Station to begin construction even though they have failed to complete the pre-construction requirements. Allowing Perennial to get around these updated standards would set a precedent and undermine the integrity of the State regulations.

Daniel Serres, Conservation Director, Columbia River Keeper (Audio begins 00:04:52)

Mr. Serres also spoke in opposition of the Council's intent to allow Perennial Wind Chaser Station to begin construction regardless of not having a DEQ permit and not meeting the pre-construction requirements. He stated staff's actions did not meet up with their words.

Gary Kahn, Attorney, Friends of the Columbia Gorge, Et al (Audio begins 00:11:23)

Mr. Kahn spoke in opposition of Council's intent to allow construction of the Summit Ridge Wind Farm, even though he believed the site certificate should be deemed terminated. He outlined issues and conditions the applicant failed to meet in a letter submitted to Council and the Department.

Elijah Cetas, Organizer, Sunrise Movement & Sustainable Economy (Audio begins 00:17:34)

Mr. Cetas stated he was in support of EFSC implementing the CO2 Standard, as it's a smart common sense way making power plants pay for their greenhouse gas pollutions, as well as a good step implementing Governor Brown's executive order. He also spoke in opposition to allow Perennial Wind Chaser Station to begin construction regardless of meeting the conditions, that it's a work around, and a violation.

Erin Saylor, Staff Attorney, Columbia River Keeper (Audio begins 00:21:28)

Ms. Saylor echoed the previous comments already heard, and she wanted to bring attention to concerns regarding Council and staff's decision to allow construction to begin of the Perennial Wind Chaser Station. She referenced the "road to nowhere", and that it did not fit the definition of "construction" and building a \$250,000 road did not qualify as starting construction. She also felt they were dodging the Council's newly revised offset rate by not amending the site certificate. She also urged Council and staff to refrain from allowing construction until they have met all the pre-condition requirements, and secured a permit from DEQ.

Karen & Steve Murray (Audio begins 00:24:47)

Mr. Murray stated Summit Ridge Wind Farms' permit has expired and pushing around dirt didn't meet the conditions of the permit. He mentioned the side near the Deschutes River during steelhead season, the amount of jets boats increase dramatically, along with degrading the property values nearby. He spoke about various types of eagles, raptors, and hawks that could be harmed by the wind farm. He was in favor of renewable energy, but this side of the river is not appropriate, and the applicant has ignored the conditions of their permit.

Karen Murray stated she was in support of the letter Mr. Kahn submitted to Council and staff, and this project doesn't fit. She requested Council stop the construction of Summit Ridge Wind Farm.

Nathan Baker (Audio begins 00:27:53)

Spoke in opposition of both the Perennial Wind and Summit Ridge Wind Farm, referencing a previous Council meeting held in May 2020. This was the meeting Council considered the COVID-19 pandemic and updating rulemaking on meeting construction deadlines. Both applicants had participated in that meeting submitting oral testimony. He reminded Council of the construction start deadlines for each of the facilities. Council adopted

⁵ Audio for Agenda Item F = 00:00:06 – August 21, 2020

option 1, which was no rulemaking, but the certificate holders should follow the normal process and file for extensions. Mr. Baker quoted the testimony from Summit Ridge and Perennial at the May 2020 meeting. He stated the certificate for Summit Ridge has expired and should be terminated, and insisted the same will happen with Perennial.

Peter Cornelsen (Audio begins 00:35:00)

Mr. Cornelsen stated he's read the complainant letter, and agrees the applicants have failed to comply terminating the permits. He stated they should be forced to reapply, should they decide to. He also agreed that the Summit Ridge Wind Farm puts hawks at risk.

Shelia Dooley (Audio begins 00:36:36)

Ms. Dooley stated her support of the complainant letter from Mr. Kahn on behalf of the Friends of the Columbia regarding Summit Ridge Wind Farm. She stated it endangers the Golden Eagle population, harms views, and recreational experiences. She requested Council to terminate the certificate for failing to complete their conditions, requirements, and the negative impacts on the environment the facility would have.

Dr. Theodora Songas, Environmentalist Health Scientist & Epidemiologist (Audio begins 00:38:26)

Dr. Songas supported Council's implementation of the updated CO2 standard, as it's key to implementing Governor Brown's executive order. She also opposed the Perennial Wind project, and stated allowing them to continue construction is allowing them to escape the updated offset rates. She spoke about danger of already high air pollutions. She asked Council to direct staff not allow Perennial to proceed with construction without meeting the pre-construction conditions and requirements.

Jill Barker (Audio begins 00:41:37)

Ms. Barker also spoke in support of the complainant letter from Mr. Kahn on behalf of the Friends of the Columbia regarding Summit Ridge Wind Farm. She stated the construction activities were unlawful, and the certificate should be terminated. She stated the several wildlife surveys were outdated, and this project is a severe threat to the Bald and Golden Eagle population, as well as many other raptor populations. She stated this project was poorly sited in a Federally designated wild and scenic area, used for recreation and other outdoor activities. She asked Council to terminate this project.

Fuji Kreider (Audio begins 00:44:20)

Ms. Kreider stated she objected to upcoming agenda item regarding the Administrative Law Judge, as she just received notice 10 days ago and in order to comment it required her to submit the comments 14 days in advance. It seemed inappropriate to make a decision without giving the public proper time to read and comment. This has just come to her attention and it's not enough notice.

Irene Gilbert (Audio begins 00:48:22)

Ms. Gilbert stated she appreciated that Vice Chair Grail and Council Member Condon both appear to show some concern for the landowners and the decision EFSC is making impacts them. Her observation is they ignore the public's outcry and the hostility it's creating. The EFSC developments are creating loss to wildlife visual and historic resources, farm, and forest land. She stated there seemed to be no consideration for financial and economic impacts of the projects. She stated Council had a history of denying all contested case requests on amendments, and why is it the public can't get through their criteria. She encouraged Council taking a bill to the Legislature. She communicated strong support with all the other commenters in opposition of Summit Ridge, and to stop allowing the manipulation of the rules.

G. Summit Ridge Wind, LLC. Financial Assurance Institution List Request (Action Item)⁶ – Sisily Fleming, Fiscal Analyst. The Council considered a request from Summit Ridge Wind, LLC, developer of the Summit Ridge

⁶ Audio for Agenda Item G = 00:54:34 – August 21, 2020

Wind Farm, to add Citibank to the list of financial institutions approved to act as issuers of financial instruments for the retirement of energy facilities.

Council Member Condon moved to approve adding Citibank to the list of pre-approved financial institutions for site certificate holder's use in obtaining the financial assurance instruments for the retirement of their facilities, and direct staff to add Citibank to the pre-approved list for 2020 – with the change of the form without striking of the word “prompt.”

Vice Chair Grail seconded.

Motion carried.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

H. Eugene to Medford Transmission Line Request for Amendment 4 Consultant Appointment (Action Item)⁷ – Katie Clifford, Senior Siting Analyst. Council considered appointing a consultant to support the review of application materials related to the EFSC Historic, Cultural and Archaeological Resources standard for the Request for Amendment 4 to the site certificate. For more information visit the [Eugene to Medford Transmission Line Project Page](#).

Council Member Howe asked if this would be limited to the Eugene to Medford Transmission Line project? Ms. Clifford confirmed it was specifically for the Eugene to Medford Transmission Line.

Council Member Howe stated he thought they did something similar for the Boardman to Hemingway project, allowing expertise as it related to historical and archaeological. His recollection was they placed a “not to exceed” on the contract, do they need to do something similar with this?

Secretary Cornett stated this situation is a bit different, and the other example was a “general” appointment. This is specific to a single project and they had no way of knowing how or if they will need their assistance. They will establish a workorder contract, and come to an agreement with them at some point, but at this point they had no way of knowing any financial numbers.

Council Member Howe stated that response cleared things up for him and he was ready to make a motion if Council was ready.

Council Member Howe moved that the Council appoint Hart Crowser to serve as a consultant to provide technical expertise and review of application materials related to the EFSC Historic, Cultural, and Archaeological Resources standard for the request for amendment 4 to the site certificate for the Eugene to Medford Transmission Line Project.

Vice Chair Grail seconded.

Motion carried.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

⁷ Audio for Agenda Item H = 01:08:11 – August 21, 2020

- I. ***Applicable Procedural Rules in EFSC Contested Cases when administered by an Office of Administrative Hearings Administrative Law Judge (Action Item)**⁸ – Maxwell Woods, Senior Policy Advisor. EFSC contested case procedural rules are a combination of Model Rules of Procedure for Contested Cases (OAR 137-003-001 through 137-003-0092) and specific rules adopted by EFSC (OAR 345, Division 15). When an agency uses an Office of Administrative Hearings Administrative Law Judge to administer a contested case, the OAH ALJ must use a separate set of Model Rules of Procedure (OAR 137-003-501 through OAR 137-003-700) unless specifically exempted in whole or in part by the Attorney General. Because EFSC has appointed OAH ALJs as its hearing officers for multiple energy facility applications, the Department recommends Council request the Attorney General provide a general exemption from the application of OAR 137-003-501 through 137-003-700, with one exception. The Department recommends not seeking an exemption from the application of OAR 137-003-0580 (Motion for Summary Determination). Neither the Model Rules adopted by the Council nor the Council's contested case rules contain a rule specifically pertaining to motions for summary determination. Application of OAR 137-003-0580 would improve Council's contested case proceedings.

Mr. Woods made a statement to Ms. Kreider and other members of the public that this agenda item makes no changes to the Boardman to Hemingway contested case procedures or to any other project. This is strictly an administrative change as they would understand once he got into the presentation.

Council Member Howe moved that because Council has appointed Oregon Office of Administrative Hearings Law Judges as its hearing officers for multiple energy facility applications, the Council request the Attorney General of Oregon provide a general exemption from the application of the Office of Administrative Hearings Contested Case rules in OAR 137-003-501 through 137-003-700 for all contested cases conducted by OAH ALJs on behalf of Council; with one exception, OAR 137-003-0580 which relates to motions for summary determination, as presented by staff.

Council Member Truitt seconded.

Motion carried.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

Meeting adjourned at 2:35 pm

For more details visit the [Council Meetings website](#).

⁸ Audio for Agenda Item I = 01:23:33 – August 21, 2020