



ENERGY FACILITY SITING COUNCIL

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

Energy Facility Siting Council October 22-23, 2020 Meeting Minutes

**Thursday, October 22, 2020 at 4:30 p.m.
Friday, October 23, 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>

Call to Order: The meeting was called to order at 4:30 p.m. on October 22, 2020 by Chair Jenkins.

Roll Call: Council Chair Hanley Jenkins, Vice-Chair Marcy Grail, and Council Members Cynthia Condon, Kent Howe, and Mary Winters, were present. Council Member Jordan Truitt joined during the Council Secretary Report.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett, Rules Coordinator, Christopher Clark, Operations & Policy Analyst, Wally Adams, Senior Siting Analysts Sarah Esterson and Chase McVeigh Walker. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

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

September 25, 2020 Meeting Minutes

Chair Jenkins requested that Council refrain from approving the September EFSC meeting minutes to allow additional time for review, and recommended Council postpone approval until November. Consensus received.

Agenda Modification

No agenda modifications.

Secretary Report

Staffing/Council Updates

Michiko Mata, Division Assistant was unable to attend the meeting, so Walter Adams, Operations & Policy Analyst would be running the meeting in her place.

Project Updates

Boardman Coal Plant – Council will hear an update from Lenna Cope from Portland General Electric tomorrow on the Boardman Coal Plant. Secretary Cornett noted that we received notice that their last day of operation was October 15th when they used up the remainder of their coal. And as a reminder, this project pre-dates the Council's decommissioning requirement. However, they will decommission the facility, and PGE has provided their decommissioning plan which is located on the Council meeting webpage under tomorrow's agenda item.

Carty Generating Station Amendment #2 – Staff issued the Draft Proposed Order on the Carty Generating Station Amendment #2 on October 2nd.

- The amendment request would adjust the site boundary, incorporate some shared infrastructure and existing facilities from the Boardman Coal Plant.
- Public comment deadline is November 2nd.
- This is being reviewed under the Type B process so there will not be a Draft Proposed Order hearing.
- We anticipate providing the Council the proposed order at the November Council meeting and based on your review, you could issue of the final order.
- Chase McVeigh Walker is the Project Lead.

Golden Hills Wind Project Amendment #6 - On October 1st the Department received request for amendment #6 for the Golden Hills Wind Project.

- The existing project is an approved 400 megawatt (MW) wind energy facility with up to 125 wind turbines with a maximum blade tip height of 650 feet within a 29,500 acre site boundary in Sherman County. The site certificate holder is Avangrid Renewables.

- They have already initiated construction by starting work on the Operations and Maintenance building
- The proposed amendment seeks approval to:
 - extend the construction completion deadline by 18 months;
 - add approximately 534 acres to the facility micro-siting corridor to adjust the final location of access roads and collector lines; and,
 - amend 7 previously imposed site certificate conditions related to the Council’s Historic, Cultural and Archeological standard.
- They have also requested this amendment be reviewed under the Type B review process
- Sarah Esterson is the project lead.

Bonanza public information meeting - On October 13th the Department held a virtual public information meeting associated with the Notice of Intent phase for the Bonanza Energy Facility project. The project is a 150 – 300 MW solar PV facility and includes up to 1,100 MW of battery storage. The project is located just outside the City of Bonanza in southern Klamath County. The applicant is Hecate Energy NAF LLC.

- Outside of staff, Council Member Condon and the project team, 22 people attended. Secretary Cornett felt the format worked pretty well and everyone who wanted to ask questions or provide comment was able to do so. Some of the questions that were raised related to:
 - Impacts to agriculture
 - Impacts to water
 - Impacts to the residences and the overall setting of the valley
 - What would be the economic value of the project
 - Would power stay in Oregon or go to California
 - Concern over the 30 day comment time frame which concludes on October 29th
- Katie Clifford is the project lead.
- Council Member Condon was on the webinar. Secretary Cornett asked Council Member Condon if she had any insights on the meeting.

Council Member Condon stated it was her first Notice of Intent meeting, and she felt it went really well. She felt staff listened to the public and treated them with respect. She stated she went to the meetings that were held in Christmas Valley and City of Condon, and to hold meetings in those rural areas are important. The communities there need to have those in-person meetings and to have a voice. She stated she was sensitive to the comments regarding the opportunity to respond within 30 days. The comment that was made was the developers have had lots of time, but the public only get 30 days to respond, which she felt was a valid comment. She felt participation was good, and overall it was a good experience.

Secretary Cornett stated it wasn’t a requirement to attend these meetings, but he encouraged Council to attend as their schedules allowed.

Summit Ridge Amendment #5 – On September 14th the Department received request for Amendment #5 for the Summit Ridge Wind Farm. The project is a 194.4 MW wind energy generation facility in northeast Wasco County.

- The amendment proposes to transfer certificate holder ownership from Pattern Renewables 2 LP to a new certificate holder owner, Aypa Power LLC. The existing certificate holder, Summit Ridge Wind, LLC., would be maintained.
- We anticipate the Transfer hearing occurring at the November Council meeting and Council’s final decision on the transfer request is also possible.
- Sarah Esterson is the project lead.

There are two appeals to Multnomah County Circuit Court on this project. Both are by Friends of the Columbia River Gorge as well as other groups.

- The first is related to the Council's denial of the request for contested case on amendment #4. This was filed in March of this year.
 - They are challenging Council's denial of their contested case request
 - The Oregon Department of Justice Trial Attorney Division has filed a motion to transfer the case to the Court of Appeals, or in the alternative to dismiss it.
 - Court lacks the subject matter jurisdiction
 - Case is moot
 - The Circuit Court has yet to decide
- The second is related to Summit Ridge beginning construction. On October 9th they filed a challenge with the Multnomah Circuit Court challenging the following three documents issued by staff:
 - August 10, 2020 Preconstruction Compliance Evaluation;
 - August 21, 2020 Preconstruction Compliance Evaluation,
 - September 10, 2020 ODOE Response to Complainants letter. Their complaint asserting that Summit Ridge beginning construction was a violation and our subsequent response that it was not was sent to Council

Boardman to Hemingway Transmission Line:

- The Hearing Officer is anticipated to issue an Order on Party Status on October 29, 2020, which will include the hearing officer's determination of whether petitioners should be granted party status and the issues to be evaluated in the contested case proceeding.
- Council rules allow petitioners to appeal the Hearing Officer's Order on Party Status to Council – appeals to Council will likely be in the form of a hearing, at the Nov 19-20 Council meeting, and will provide petitioners, applicant and Department an opportunity to provide testimony.
- We wanted to note that because Patrick Rowe, Senior Assistant Attorney General at DOJ is Counsel to the Department for the B2H contested case proceeding, Jesse Ratcliffe will act as Counsel to Council regarding the B2H contested case including at the relevant Council meetings.
- To support Council's understanding of important contested case proceeding requirements, information will be provided in the November Council packet regarding ex parte communication and exempt meeting provisions. But, if there are any questions about the contested case proceeding or applicable requirements, please let us know or communicate directly with Jesse Ratcliffe.

Also note that Council rules require that the Hearing Officer provide updates to Council on the status of the contested case proceeding, which may be provided as part of future Council packet information items or written updates during periods of non-scheduled Council meetings.

- Yesterday Chair Jenkins and the Department received Attorney General Rosenblum's exemption allowing the Oregon Office of Administrative Hearings to continue using the model contested case rules and EFSC's contested case rules instead of the OAH contested case rules on all projects through the life of our Interagency Agreement with the Oregon Office of Administrative hearings, which is June 30, 2021. This supersedes her prior exemption specifically for the Boardman to Hemingway project and makes one substantive change which is related to motions for summary determination, which she leaves the Council, the presiding Administrative Law Judge, and the parties to resolve.

Wheatridge Renewable Energy Facility I and II – Request to Amend Revegetation Plans: It is the Department's standard practice to bring forth to Council either for concurrence or as an update, based upon level of substantive changes, any requests by certificate holders to amend mitigation plans previously approved by Council. In August, they received a request to amend the Revegetation Plans for Wheatridge Renewable Energy

Facility I and Wheatridge Renewable Energy Facility II to change the grassland seed mix, to remove forbes given limited likelihood of success, and remove the forbes success criteria. These changes were reviewed by ODFW, Morrow County Weed Department and the Department and determined reasonable. The seed mix for other native grasses were increased to adjust for the removal of forbes. The Department, in consultation with ODFW, approved these changes, but welcome any comments or questions from Council.

Chair Jenkins asked if this would be on the November agenda?

Secretary Cornett replied that this is one as staff determined it was okay. The Department evaluated the nature and significance of the changes, and if they determine it's on the low end they bring an update to Council subject to them bringing any concerns forward. Which then could be brought to a full Council meeting if needed. During tomorrow's agenda item Ms. Esterson will be talking about a change that did meet the level of requesting Council to review and approve. Secretary Cornett wanted to be clear that this item didn't raise to that level or of any concern that the Department felt it needed anything beyond an update to Council. However, if Council felt this should be brought to Council for a review staff could certainly do that.

Council Member Condon asked how the original seed mix was determined in the first place, was it ODFW?

Ms. Esterson stated the seed mix is based on the habitat sub-types that are being restored based on temporary disturbance, which is a mix of native grass land species that were originally proposed by the applicant around 2012. The applicant proposed the forbes with the grass lands, and ODFW stated they didn't believe it would be successful. The goal with the revegetation plan is to restore the habitat that was impacted.

Radioactive Waste Rulemaking – Secretary Cornett provided an update on the radioactive waste rulemaking project. A reminder, that the purpose of this project is to ensure that the procedures and sanctions authorized by OAR 345-029 are sufficient to protect public health and safety and the environment by incentivizing preventative measures to ensure that radioactive material or waste is not improperly transported or disposed of in Oregon, and to require appropriate mitigation when a violation occurs.

There have been two Rulemaking Advisory Committee meetings and the third one is Monday, November 2nd. At that meeting we will have draft language for RAC members to review and respond to. If any Council members would like to attend, you are more than welcome to do so. Chris will send the RAC meeting information to you on Monday.

Future Meetings

Availability of Council Members for future meeting dates:

November 19th and 20th. They will likely need both Thursday evening and Friday. The meeting will be virtual. All Council members indicating they will be available, and they were asked to let staff know if that changed.

B. [5:00 p.m.] Public Hearing: Safe Public Meetings and Hearings Rulemaking (Hearing)¹ – Christopher Clark, Rules Coordinator. Council conducted a public hearing on proposed rules to allow the Council to waive any provision of rule requiring that a public meeting or public hearing be held in person or in a specific geographical area, if the Council Chair finds that in-person attendance at the meeting or hearing would present a risk to public health or safety or the health and safety of the participants. Mr. Clark was the Hearing Officer.

Mr. Clark provided an overview of the proposed rules and informed meeting participants that the deadline to submit written comments was 6:00 pm on October 22, 2020.

¹ Audio for Agenda Item B = 00:31:41 – October 22, 2020

Mr. Clark opened the hearing at 5:04 pm for public testimony, no persons wishing to provide testimony were present. Mr. Clark recessed the hearing.

Mr. Clark reopened the hearing at 5:30 pm. No persons wishing to provide testimony were present. Mr. Clark closed the hearing.

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

Recessed until 8:30 am on Friday October 23, 2020.

Call to Order: The meeting was called to order at 8:30 a.m. on October 23, 2020 by Chair Jenkins.

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

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett, Rules Coordinator, Christopher Clark, Operations & Policy Analyst, Wally Adams, Senior Siting Analysts Sarah Esterson and Chase McVeigh Walker. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

Agenda Modifications

No agenda modifications

- C. Council Review of Amended Wildlife Mitigation and Monitoring Plans for Wheatridge Renewable Energy Facility I and Wheatridge Renewable Energy Facility II (Action Items)²** – Sarah Esterson, Senior Siting Policy Analyst. The Council received a presentation from staff (continued from the presentation provided at the July 22, 2020 Council meeting) on certificate holder requests to modify the survey methods and use a different statistical analytical model for the post-construction bird and bat fatality monitoring study required under the Wildlife Monitoring and Mitigation Plan (WMMP). Council approved the WMMP amendment requests. For more information visit the [Wheatridge Renewable Energy Facility I](#) and [Wheatridge Renewable Energy Facility II](#) project pages.

Chair Jenkins requested clarification on the following statement (underlined) in the WMMP, Section 3.1.4 Duration, “If fatality rates for the first year of monitoring at the Facility exceed any of the thresholds of concern (see Section 3.6) or the range of fatality rates found at other wind power facilities in the region (as available), the Certificate Holder will consult with ODOE and ODFW regarding potential mitigation.” Ms. Esterson confirmed that the statement was not new or part of the changes under review, but that the intent was to establish that results of the PCFM would be compared to both the thresholds of concern, as established in the WMMP, and a range of available data for wind facilities in the region – and that if lower than the threshold but higher than the range, certificate holder would consult with the Department and ODFW on potential mitigation.

Ms. Esterson reviewed the provision in the plan where they gather the data, inputting it into their analytical tool, compare the results, and the threshold of concern is exceeded, they proceed to assess mitigation. Ms. Esterson further explained that the two facilities had a provision in the WMMP that if a threshold isn’t exceeded the certificate holder would compare their results to a range of fatality rates from other wind facilities in the area to determine if the Wheatridge facility exceeded the range of the other facilities. If they did, then they’d add to this to the WMMP. This component isn’t new, and had been in the plan since the beginning.

Council member Condon referencing page 3 of the WMMP plan, and asked now that the modeling is 10 years old, is it still good modeling?

Ms. Esterson replied that she would have to get back to Council Member Condon. However, they talked a lot about it, and the approach, which ODFW really focused on. She didn’t know if it was the most recent or the best way to base it on, and she would be happy to provide all that information to Council Member Condon so she could have a better understanding.

Council member Condon clarified and asked if they were relying on ODFW’s expertise to choosing the appropriate plan or study they should be using?

² Audio for Agenda Item C = 00:03:04 – October 23, 2020

Ms. Esterson confirmed they were using ODFW's expertise.

Council Member Howe moved that the Council approve the amended Wildlife Monitoring and Mitigation Plan for Wheatridge Renewable Energy Facility I and Wheatridge Renewable Energy Facility II, as presented by staff.

Council Member Winters seconded.

Motion carried.

Legal Counsel Rowe noted that a representative from Tetra Tech offered to answer Council Member Condon's question in the chat feature of the webinar, and asked if Council wanted to give the opportunity.

Chair Jenkins confirmed it would be good to hear the information even if the motion had been made and approved already.

Mr. Cambier a representative from Tetra Tech stated that the 2010 model Council Member referred to was the original model of how the fall distribution occurred around a wind turbine when birds strike it. Which has been used in more recent studies and fine-tuned, so it's a starting point for that modeling. The industry and scientists have updated or fine-tuned it as the years have progressed, but this is just giving credit to the original developers of that method.

Chair Jenkins asked if the amendments to that method are found in the WMMP?

Mr. Cambier confirmed they were, and more recent studies using the same methodology.

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

D. Initiation of Protected Areas, Scenic Resources, and Recreation Rulemaking (Action Item)³ – Christopher Clark, Rules Coordinator. Council considered staff's recommendation to initiate rulemaking proceedings to develop proposed revisions to the Council's Protected Areas, Scenic Resources, and Recreation Standards and associated rules. For more information visit the [Rulemaking page](#).

Mr. Clark provided an overview of staff's preliminary recommendations for the rulemaking project, including a recommendation to solicit written advice from the public to assist in the development of proposed rules.

Vice-Chair Grail expressed concern regarding initiation of such a big rulemaking during COVID-19 and omitting the ability of in-person participation.

Mr. Clark acknowledged that this was a valid concern, and stated that the Department had carefully considered whether it was a good time to move forward with the project. He stated the Department believed that soliciting written advice on the scope of the project was appropriate, but agreed that the process of deliberation on issues could benefit from in-person meetings. He stated the Department believed it was appropriate to proceed, but the Council could also postpone all or part of the rulemaking.

Secretary Cornett proposed a third option for Council was to direct staff to proceed with the initial stage as proposed, and then come back to Council to reassess if the project can proceed without the opportunity for in-person meetings.

³ Audio for Agenda Item D = 00:30:54 – October 23, 2020

Chair Jenkins agreed with Vice-Chair Grail. He stated he believed Vice-Chair Grail wanted a pause after doing the preliminary assessment and request for additional information from stakeholders, then bring it back to Council to have a discussion on whether to move forward or not.

Council member Winters agreed the two-step process would be best, and requested staff to provide additional information about participation as they proceed. She stated that she has found that the ability to attend meetings virtually has opened up participation to some that may not be able to attend in-person, and that if public agencies can find the appropriate technology, a combination of virtual and in-person processes may be preferred.

Council member Howe agreed with the others and liked the two-step process. He also requested clarification of some categories of Protected Areas provided on a map presented during Mr. Clark's presentation.

Chair Jenkins stated that since there was no formal action under consideration, consensus was sufficient to move forward with the first step of the process. Hearing no opposition, Chair Jenkins directed staff to proceed with soliciting informal advice from the public and to return to Council with recommendations on how to proceed.

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

E. Biennial Fee Update (Action Item)⁴ – Sisily Fleming, Siting Fiscal Analyst. The Council considered staff's recommended fee schedule for 2021-2022.

Council Member Howe moved the Council approve the Schedule of Fees as presented by staff.

Vice-Chair Grail seconded.

Motion carried.

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

F. Portland General Electric Presentation: Boardman Coal Plant Shutdown (Information Item)⁵ – Lenna Cope, Senior Environmental Scientist, PGE. Council received a presentation from PGE regarding the shutdown of the Boardman Coal Plant. For more information visit the [Boardman Coal Plant](#) project page.

Council member Condon asked if there has been any pushback from Idaho Power on paying their 10% of the costs.

Mr. Bozzini from PGE said they are working closely with Idaho Power and they are onboard for paying their share of demolition costs. He also stated Idaho Power planned to be onboard throughout the entire decommissioning process.

Secretary Cornett thanked PGE for their presentation, and they agreed to provide the PowerPoint which is already up on the ODOE website.

Chair Jenkins noted that the decommissioning plan is PGE's and not Council's.

⁴ Audio for Agenda Item E = 001:00:36 – October 23, 2020

⁵ Audio for Agenda Item F = 01:04:33 – October 23, 2020

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

G. Public Comment Period⁶ – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

Dan Serres, Conservation Director, Columbia River Keeper

Sincerely disappointed because EFSC allowed Perennial to move forward with construction. Riverkeeper has submitted a 60-day notice of intent to sue under the Clean Water Act because Perennial did not obtain a stormwater permit.

In August 2020, Riverkeeper was surprised to learn that Perennial would not seek a site certificate amendment. Learned through their own inquiry and not through public being informed. Riverkeeper and coalition of environmental organizations urged Council to intervene.

In September ODOE dismissed concerns. Said only some pre-construction conditions were necessary. But they need to obtain construction rights on all parts of the facility. Don't want to end up with a road to nowhere. By allowing phased approach, ODOE was changing terms of site certificate, which should have been done through site certificate amendment.

In Sept 2020, road construction began. Riverkeeper learned that construction occurred without construction stormwater permit. This violates condition CON-SP-01.

ODOE has failed to require conditions to be followed. Hollowed out efficacy of construction conditions. Allowed company to pick and choose. Holds door open for facility to pollute. Blowing a hole in Oregon's carbon reduction goals. Law broken.

Irene Gilbert

Ms. Gilbert stated she supported comments made by Riverkeeper. ODOE is getting worse about picking and choosing parts of statutes and rules they choose to focus on. Major concern that developers are being allowed to start construction on portions absent approval of entire site. Rules are specific that in order to start action on any part of site, it must be shown that they would build that part regardless of whether other parts would be built. Urges Council to take a look at other projects to make sure they don't begin construction on any parts of the site without approval on all parts.

ORS 183.630(2) regarding exemptions on general rules. Statute allows Attorney General to exempt agency or category of cases from the requirements of (1). (1) refers to Model Rules, and does not support a change in the rules related to one specific contested case hearing or allow a change while a contested case is occurring. ODOE allows changes specific to a development that are not allowed by statute. Cannot put into rule what is not allowed by statute. Continuing issue with ODOE recommending to Council to apply one part of statute and ignore the rest, or to alter rules in a way that is not allowed by statute and rules. These issues will come up more frequently. It's come to the point that when ODOE provides Council inaccurate information, they will find themselves increasingly in court being challenged. Urge Council to require ODOE to provide full story to EFSC.

⁶ Audio for Agenda Item G = 01:28:10 – October 23, 2020

Fuji Kreider

Mrs. Kreider sent Secretary Cornett a report to share with Council. Update on what's been happening since she called in during the August meeting. Concerned because the agenda had a rule modification, and about to modify the rules for contested case process. Currently in a contested case period for B2H project. Mrs. Kreider was concerned that the rules would change during process. ODOE provided assurance that the changes would not apply to B2H contested case. Mrs. Kreider spoke with Mr. Woods, Senior Policy Advisor who guaranteed it wouldn't affect B2H. However, what came back was a rule modification was only for B2H, and the public is upset. Not sure if EFSC gets informed of all this along the way. She's put the information in writing and wanted to keep Council informed, because EFSC has had concerns about negative media and making sure public is involved. Now procedures and process are more complicated for B2H contested case. She urged Council to keep track of what's happening, as it's been confusing for public. On behalf of herself and on behalf of Stop B2H Coalition, she doesn't believe it's Council's intent to put up barriers for public participation, so wanted to make them aware of what's been happening.

Regarding rulemaking on Protected Areas, Scenic Resources, and Recreation standards, she appreciates Council members comments about public involvement during COVID, and this situation may be going on for some time. This will be a huge rulemaking process, and felt they should do RAC process and get broad spectrum of participation. Could work virtually via Zoom or other virtual ways; people could get a lot of work done virtually and then do more down the line in person.

She concurs with Riverkeeper about everything related to Perennial.

Concludes public comment.

H. Council Appointment to The Climate Trust's Oregon Offset Committee (Action Item)⁷ – Todd Cornett, Siting Division Administrator/Council Secretary. The Council received a brief overview of The Climate Trust's Oregon Offset Committee which makes decisions regarding the use of carbon offset funds received as part of the Council's carbon standard. The Council may then appoint a Council member to the Oregon Offset Committee.

Chair Jenkins thanked Council member Condon for stepping forward and being interested in serving on that Committee.

Council member Condon appreciated the opportunity and views it as an important piece for the Council.

Council Member Howe moved the Council appoint Council Member Condon to The Climate Trust's Oregon Offset Committee for a period of four years, beginning today and concluding on October 23, 2024.

Council Member Truitt Seconded.

Motion Carried.

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

I. Council Review and Possible Decision of Safe Public Meetings Rulemaking (Action Item)⁸ – Christopher Clark, Rules Coordinator. Council considered public comments received on proposed rules to allow the Council to waive any provision of rule requiring that a public meeting or public hearing be held in person or in

⁷ Audio for Agenda Item H = 01:46:33 – October 23, 2020

⁸ Audio for Agenda Item I = 01:53:00 – October 23, 2020

a specific geographical area, if the Council Chair finds that in-person attendance at the meeting or hearing would present a risk to public health or safety or the health and safety of the participants. After considering public comments, Council considered the adoption of permanent rules.

Mr. Clark confirmed that the Council had received one written comment on the proposed rules, and that no additional comments or testimony had been provided during the hearing held as Agenda Item B.

Mr. Clark explained that the one comment received asked if the rules apply to protestors and rioters. Mr. Clark explained that civil unrest was not something that was contemplated in the drafting of the proposed rules, but that the rule language is intended to allow the waiver whenever the Council or Chair finds there is a risk to public health and safety or the health or safety of the participants, and does not address the nature or cause of the risk. Mr. Clark explained that the Council could elaborate on the intent of the rule if it wished.

Vice-Chair Grail stated for the record that she clearly understands why the Council needed to take this action and that the Council knows that this is not the last time the ability to have in-person meetings will be challenged, and she acknowledged Council member Winters' earlier comment that the ability to participate virtually has benefitted some people. With that said, she stated that as Vice-Chair, she wanted to be emphatically clear that the rule should only be used in circumstances that are extremely outside of the control of the Council, providing circumstances where an Order from the Governor has limited in-person meetings as an example. She stated that she believed everyone involved recognized the importance of the Council meeting in the areas where projects under review are sited, and that while she supported the proposed rule, it should be clear that it is not a free pass for the Council not to travel to the areas where the work is being done.

Council member Howe seconded Vice Chair Grail's comments.

Council member Howe moved for the Council to adopt permanent rules, as presented in the Notice of Proposed Rulemaking.

Council member Winters seconded the motion.

Chair Jenkins asked if there was further discussion.

Council member Winters commented that she appreciated staff's earlier comments on the intent of the rule, and recommended that, while she agreed that the rule should only be used to address an extreme event, there would be a danger in making the rule language overly specific because these events are unpredictable.

Chair Jenkins agreed.

Council member Condon asked if there would be opportunity for Council deliberation before a waiver of in-person meeting requirements would be granted, and whether or not the ability of affected persons to access a virtual meeting would be considered.

Chair Jenkins explained that the proposed rules allow the waiver without this discussion, but that in a situation where there is gray area around the appropriateness of the waiver his preference would be for the decision be made by the Council rather than the Chair.

Chair Jenkins asked Secretary Cornett to call the roll.

Motion carried.

Secretary Cornett commented that he appreciated and agreed with the Council's discussion. He added that staff would only request a waiver under the rules in extraordinary circumstances.

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

Meeting adjourned at 11:00 am

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

DRAFT