



ENERGY FACILITY SITING COUNCIL

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

Energy Facility Siting Council January 22, 2021 Meeting Minutes

**Friday, January 22, 2021 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, January 22, 2021 – Webex Teleconference

Call to Order: The meeting was called to order at 8:30 a.m. on January 22, 2021 by Chair Grail.

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

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor, Sarah Esterson, Rules Coordinator, Christopher Clark, Senior Siting Analyst, Chase McVeigh-Walker, Fiscal Analyst, Sisily Fleming, Operations & Policy Analyst, Wally Adams, and Division Assistant Michiko Mata. 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.

Consideration of Minutes

November 19-20, 2020 Meeting Minutes

Council Member Jenkins motioned Council to approve the minutes of the November 19-20, 2020 meeting as presented.

Vice Chair Howe seconded the motion.

There was a friendly amendment to the motion to change line 4 of page 9, offered from Cindy Condon that “Hourventure” should be “Aypa Power”.

Chair Grail called on the Secretary to call the roll.

Motion carried by unanimous consent.

November 25, 2020 Special EFSC Meeting Minutes

Council Member Jenkins motioned Council to approve the minutes of the November 25, 2020 meeting as presented.

Vice Chair Howe seconded the motion.

Chair Grail called on the Secretary to call the roll.

Motion carried by unanimous consent.

December 18, 2020 Meeting Minutes

Council Member Jenkins motioned Council to approve the minutes of the December 18, 2020 meeting as presented.

Vice Chair Howe seconded the motion.

Chair Grail called on the Secretary to call the roll.

Motion carried by unanimous consent.

Chair Grail confirmed Agenda Modifications were not proposed.

Council Member Truitt stated that his appearance by teleconference is listed in the meeting minutes for November 20 when in fact he was not in attendance.

Secretary Cornett noted the scrivener error for correction.

Secretary Report

Secretary Cornett offered the following comments during his report to the Council.

Staffing/Council Updates

- The recruitment for the Utility and Energy Analyst 3 position formerly held by Sarah Esterson is being reopened to augment the candidate pool. It is anticipated to be filled in the next few months.
- Administrative Assistant, Michiko Mata, submitted a letter of resignation and will be leaving the Department at the end of January. Secretary Cornett and Council members expressed gratitude for her support of the Council.

Project Updates

- **Wagon Trail Solar – Notice of Intent (NOI)**
ODOE held a virtual public information meeting on the new Wagon Trail Solar NOI the evening of January 7th. The project is a 500 MW solar PV project on approximately 4,500 acres (7 sq. miles) in Morrow County. Chair Grail and Council members Jenkins and Condon called in to the meeting. Public attendance was minimal, however included Morrow County representatives and an affected landowner. Very few comments have been received on this project.
Chase McVeigh Walker is the project lead.
- **Boardman Solar – Amendment #1**
In early January the Department received Amendment #1 for the Boardman Solar Energy Facility. The site certificate holder is requesting a “Type B Amendment Review” to extend the beginning construction deadline by three years from February 23, 2021 to February 23, 2024, and the ending construction deadline by three years from February 23, 2024 to February 23, 2027. The project is a 70 MW solar PV facility on 798 acres in Morrow County. Staff are currently reviewing the request for Type B review eligibility and completeness.
Chase McVeigh Walker is the project lead.
- **Shepherds Flat North, South and Central - Amendment Requests**
On January 7th the Department received three ownership transfer notices from Caithness, parent company of the site certificate holders for the Shepherds Flat North, Shepherds Flat South and Shepherds Flat Central facilities. Caithness intends to transfer the projects to BEP SF Holdings. They expect the transfer will not close until March of 2021. The site certificate holders for each facility will remain unchanged.

Last Friday, January 15th, the Department received the three transfer amendment requests and will be issuing a notice within 15 days with the anticipated Transfer Hearing date.

Kellen Tardaewether is the project lead for all three transfer requests.

Contested Case Updates

Council members can expect updates in the coming months from the Hearing Officers for the Boardman to Hemingway Transmission Line and the Obsidian Solar Project per OAR 345-015-0023(4). Secretary Cornett provided the following updates:

- **Boardman to Hemingway**
The Hearing Officer issued the Case Management Order last week establishing the parties, the issues for each party, the contested case process and schedule. This contested case is in the Discovery phase.

- Obsidian Solar Center
Awaiting Hearing Officer to issue his order on party status.

Council member Condon asked to restate the name of the company Caithness intends to transfer the Shepherds Flat facilities to and inquired as to whether the Department has prior experience with the company.

Secretary Cornett clarified that the company is BEP SF Holdings, a large company with a portfolio that includes a large number of renewable energy projects throughout the United States, and that the Department has not had prior experience with them. He went on to remind the Council that through the review of the transfer request the organizational expertise and financial viability of BEP SF Holdings will be evaluated in detail.

Legislative Updates

- Key Dates for the 2021 legislative session include:
 - Session officially started on Tuesday of this week (virtually)
 - February 23rd - Bills need to be introduced (this is the universe)
 - March 19th - Bills need to be posted for a 1st chamber work session or they will not advance
 - April 13th - Bills need to have had a 1st chamber work session or they will not advance
 - May 14th - Bills need to be posted for a 2nd chamber work session or they will not advance
 - May 28th - Bills need to have had a 2nd chamber works session or they do not advance
 - June 18th - Target Sine Die (or end of session)
 - June 27th - Constitutional Sine Die
- Agency Bills
 - HB 2063 - Standby Generators – Standby generators are generators over 25 MW incapable of connecting to the grid. They are typically diesel, located in urban areas and have increasingly been used as back up emergency power for data centers, among others. Under current law generators of this size are required to seek an exemption from EFSC jurisdiction, and this bill would eliminate that requirement. DEQ and local land use approvals are also required, essentially eliminating the need for EFSC exemption.
 - HB 2064 – EFSC Quorum – Reduces the EFSC quorum requirement from five to four. The changes align the simple majority for a quorum consistent with other natural resource boards and commissions offering greater flexibility to conduct business during council member vacancies or conflicts.
- EFSC Bills of Interest
 - HB 2691 – Avian Death Prevention at Wind Facilities – Requires Department to conduct an evaluation of current technologies to reduce avian fatalities and present that report to a legislative committee in 2022.

Chair Grail inquired as to whether the evaluation would be completed by a consultant or by the Department. Secretary Cornett explained that due to staff capacity its anticipated that a consultant would be needed.

- SB 353 – EFSC Study and Reporting – Requires Department to conduct a study to examine potential improvements to the processes of EFSC, including potential legislation, and present that report to a legislative committee in 2022.
- HB 2556 – Property Owner Notification – Department of Land Conservation and Development (DLCD) bill related to noticing of property owners during land use actions. Changes requirement for projects in an urban growth boundary to notice all property owners within 600 feet from 100 feet of the site boundary. Notifications for projects outside of an urban growth boundary would increase to one half mile regardless

of land use zones. Additionally, requires notice be sent to the physical property address as well as the address of the property owners, if different, to ensure potential renters are notified. This could impact the number of notices issued for applications under EFSC review and will be monitored by the Department.

- **Bills Related to Siting Nuclear Power Facilities**

Before introducing the three specific bills, Secretary Cornett offered a brief overview of the current laws regarding nuclear-fueled power plants and EFSC's jurisdiction. Under ORS 469.595 a federal repository for high level radioactive waste must exist before EFSC may issue a site certificate. There is not currently such a repository, nor is there likely to be one in the near future. In addition, if a federal repository were in place, and EFSC were to determine that all standards have been met in an application for site certificate, any nuclear power facility would first need to be approved by a vote of the people of Oregon in a statewide election before the Council could issue a site certificate.

- HB 2692 - Small Modular Reactor – Exempt small, modular nuclear reactors from having to meet the voter approval requirement.
- HB 2332 – Nuclear Waste Repository Licensing Requirement – Repeals the requirement that a federal repository for high-level radioactive waste exist before EFSC could issue a site certificate for a nuclear-fueled power plant.
- SB 360 – Small Nuclear Reactor Exemption – Exempts small modular nuclear reactors from the federal repository and vote of the people requirement. Requires those facilities could only be sited in a city or county where electors of city or county have approved small modular reactors be in city or county.

- **Radioactive Waste Transportation bills**

- HB 2831 & SB 246 (Identical) - Radioactive Waste Disposal - Modifies definition of radioactive waste for purposes of regulation by ODOE. Requires EFSC to adopt standards and rules necessary to prevent disposal of radioactive waste in Oregon. Provides Director of ODOE and council additional authority for administration and enforcement of laws related to disposal of radioactive waste.

- **Other Bills of Interest**

Secretary Cornett explained that the Department tracks many additional bills based on their “relating to” clause. These clauses govern the content of the bill. If the “relating to” clause is narrow – the changes to the bill must be narrow. If the “relating to” clause is broad, then there is a lot more opportunity to change the bills.

Council Member Winters appreciated the explanation of the “related to” clause and noted other bills that included “related to energy” clauses, such as HB 2190, that were not mentioned and asked how the Department tracks the broader policy bills. She also expressed her desire for staff to remain tracking and checking in with Council moving forward to allow the Council to be active in the changes taking place as they relate to energy.

Secretary Cornett described the Department’s Governmental Affairs Manager and internal legislative team who track all legislation for potential impacts and inform divisions accordingly as sessions progress and they are committed to frequent legislative updates.

Council Member Condon agreed with the previous council member’s comments and inquired as to whether changes to Council standards would be required if the bills related to small modular reactors are passed.

Secretary Cornett responded that changes to Council standards are not included in the current bill language and reiterated that additional approvals beyond EFSC would also still be required.

Assistant Attorney General Patrick Rowe mentioned HB 2520 (44:42) another DLCD bill that would amend land use planning goals related to energy conservation to incorporate development of renewable energy facilities and to reduce greenhouse gas emissions requiring ODOE participation.

Biennial Energy Report

The Department released its second Biennial Energy Report, as required by the legislature, at the end of 2020. The report is intended to provide timely information to the legislature on local, regional and national energy issues. The report is available online and hard copies are available for Council members by request to the Secretary.

Future Meetings

Council members confirmed their availability for a meeting February 26th. Council members should communicate with Secretary Cornett in Ms. Mata's absence.

- B. [9:20 a.m.] Radioactive Materials Enforcement Rulemaking (Hearing)**¹ – Christopher Clark, Rules Coordinator. The Council received public comments on the proposed revisions to OAR chapter 345, division 029, related to enforcement of rules and laws governing the disposal of radioactive waste materials in Oregon. The deadline to provide the Council with written comments on the proposed rules is February 10, 2021 at 5:00 pm. For more information visit the [Rulemaking](#) page.

Mr. Clark provided background information on the rulemaking project, including an overview of the proposed rules, and the procedural timeline.

Mr. Clark explained how the hearing would be conducted and asked any persons wishing to provide testimony to identify themselves.

Mr. Clark opened the hearing at 9:31 a.m.

Public Testimony

The Council received testimony from the following individuals:

- Darren Creason, Gilliam County resident
Mr. Creason explained that he lives within 5 miles of the Chemical Waste Management facility (in Arlington, Oregon). Mr. Creason expressed concerns with companies breaking existing laws and then changing laws to accommodate their actions. He stated that he was very concerned about radioactive “fracking wastes” being disposed of at the Chemical Waste Management Facility due to the potential for groundwater contamination and the uncertain and long-term nature of health risks, including the increased risk of cancer.
- Daniel Serres, Columbia Riverkeeper
Mr. Serres expressed appreciation and support for Mr. Creason's testimony. Mr. Serres stated that monitoring had shown leachates with a concentration up to 358 picocuries per liter, which is 17 times the drinking water standard. Mr. Serres expressed support for the Council's rulemaking process and the enforcement procedures included in the proposed rules. Mr. Serres stated that the more effective enforcement the Council puts in place, the more it will protect people and families like Mr. Creason's.
- Shirley Weather, League of Women Voters of Oregon

¹ Audio for Agenda Item B = 00:50:08 – January 22, 2021

Dr. Weathers explained that she was a member of the Rulemaking Advisory Committee for this project. Dr. Weathers stated that it has been tragic to see what has happened to the community around Arlington. She expressed support for the actions taken by the Oregon Department of Energy to address the situation and the EFSC rulemaking. Dr. Weathers stated that her involvement in the Rulemaking Advisory Committee had been a positive experience and that she was impressed with the process and the work by the Department and Council Staff. She stated that the in-depth discussion around Oregon's laws and rules regarding "fracking" was an important by-product of the process and stated her belief that those laws and rules are out of date. Dr. Weathers stated that the proposed changes to division 029 were a step in the right direction and that she was looking forward to the additional rulemakings planned on this subject. Dr. Weathers stated that there is a lot of radioactive waste out there looking for a home and that she does not want it to be in Oregon.

- Christopher Jackson

Mr. Jackson stated that the main reason for the reluctance to clean up the waste disposed of at the Chemical Waste Management facility was a "handshake agreement" between the facility and the transporter, and that he believed this should be addressed in the rules. Mr. Jackson stated that the proposed rules do not address "handshake agreements" or verbal agreements. He also stated that he did not see an obligation to clean up wastes in the proposed rules, and that he only saw civil penalties. Mr. Jackson stated that he believed the reason that the waste was not being required to be excavated and removed from the facility was that it would be cost prohibitive, and that he thought that someone should be required to pay for the removal. He stated that he would like to see the rules include the option to use state law enforcement to arrest someone.

Mr. Clark made one last call for persons who wished to provide testimony, seeing none, Mr. Clark closed the hearing at 9:45 a.m.

Mr. Clark explained that the deadline to provide the Council with written comments on the proposed rules is February 10, 2021 at 5:00 pm and that comments received after that time would not be considered unless the Council extended the comment period for everyone.

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

C. 2021-2023 Rulemaking Prioritization (Action Item)² – Christopher Clark, Rules Coordinator: Mr. Clark provided an update on the Council's rulemaking activities conducted in 2020 and presented staff's recommendations for potential rulemaking projects to be undertaken for each year in the 2021-2023 time period. Mr. Clark also provided staff's initial recommendation for whether the project would utilize a Rulemaking Advisory Committee (RAC), or another method of obtaining public input.

The recommended rulemaking schedule and proposed method for obtaining advice was presented as follows:

- In Progress Rulemaking
 - Radioactive Materials, Rulemaking Advisory Committee, RAC
 - Protected Areas, Scenic Resources, and Recreation, TBD
- 2021
 - Application Process Review – Phase 1, RAC
 - Trojan ISFSI Compliance, request for written advice
 - Research Reactors, request for written advice
 - Wildfire Prevention and Response, RAC
 - Exemptions from Site Certificate, RAC
- 2022

² Audio for Agenda Item C = 01:15:30 – January 22, 2021

- Application Process Review – Phase 2, RAC
- 2022 Amendment Rulemaking, RAC
- Historic, Cultural and Archaeological Resources, public workshop
- General Compliance, RAC
- 2022 Carbon Monetary Offset Rate Update, Fiscal Advisory Committee
- 2023, or later
 - Contested Cases, RAC
 - Application Process Review – Phase 3, RAC
 - Noise Standard, RAC
 - Geospatial Resources, RAC
 - Natural Hazards Mitigation, RAC
 - Mandatory Conditions in Site Certificates, RAC

For more information visit the [Rulemaking](#) page.

Council Member Jenkins asked if the schedule presented by staff had prioritized rulemaking projects only by year, or if the projects had also been ranked in priority within each year. Council Member Jenkins noted that any of the projects could take up a considerable amount of staff time and resources and expressed concerns that there may not be time to take up each project in the order proposed.

Mr. Clark responded that the schedule was intended to reflect the sequencing expected by staff but that the projects were not finely prioritized. Mr. Clark stated that if Council approved the schedule that staff would conduct work on all the projects and that the sequences could be altered by external factors such as legislative action or internal resource constraints.

Chair Grail commented that while she understood that sequencing may change, she believed the project related to Wildfire Prevention and Response needed to be prioritized. She stated that the Council needed to not lose sight of what happened to the victims of the 2020 wildfire season and that she hoped that we could act on this issue sooner rather than later.

Mr. Clark stated that he understood the Chair’s direction to prioritize preliminary work on this project and bring it to Council as soon as possible. He stated that staff was tracking OPUC rulemaking and proposed legislation very closely and would work to be prepared to bring analysis to the Council when there was some certainty about those processes.

Chair Grail stated that she was just one voice on the Council but given the testimony provided on Boardman to Hemmingway and other projects and the environmental trends increasing wildfire risk we needed to get ahead of the issue.

Council Member Truitt seconded the proposal to prioritize work on the Wildfire Prevention and Response Project. He stated that he and many of the other Council members have been personally involved in the wildfire recovery efforts and wanted to stress the importance of continuing to work on this issue even when there are not active fires occurring in Oregon.

Vice-Chair Howe commented that he was in support of prioritizing work on the Wildfire Prevention and Response project as well.

Chair Grail noted that Council Members Condon and Winters also indicated non-verbal support for prioritizing the project.

Council Member Jenkins stated that he also thought it was important to prioritize the Wildfire Prevention and Response project but that he thought that it was appropriate that the Council wait to initiate rulemaking until after it was clear what actions the OPUC rulemaking and legislature would take. He stated that he thought the Council's direction to prioritize work was intended to ensure that the rulemaking project moves forward in 2021 and is not reprioritized or delayed to accommodate other rulemaking priorities. Chair Grail concurred.

Secretary Cornett indicated that he felt Council's direction was clear, and that in addition to prioritizing work on the rulemaking project, staff would provide Council with updates on the status of the OPUC rulemaking and wildfire related legislation while preliminary work is underway. Mr. Clark confirmed.

Council Member Condon stated that, regarding the proposed Application Process Review project, she felt it was important that the Council not diminish or abandon opportunities for public participation in its efforts to make the review process more efficient. On the contrary, she thought that one of the objectives for this project should be to expand opportunities for public participation.

Council Member Condon asked if the recommendation to use a RAC or a different method to obtain public advice reflected a difference in the importance or the weight given to advice received.

Mr. Clark responded that the recommendations were informed on the scope of the project, the complexity of issues under consideration, and the level of public interest.

Council Member Condon asked who would receive notice of a Public Workshop. Mr. Clark stated that Notice would be provided to all persons on the Council's rulemaking mailing lists and any stakeholders the Department or Council identifies as likely to be interested in or affected by the rulemaking.

Mr. Clark provided specific examples of why Staff recommended a Public Workshop for the Historic, Cultural and Archaeological Resources Project and how outreach for that workshop would be conducted. He also explained that staff recommended the project be postponed in the schedule so that the workshop could occur in person. Chair Grail stated that she agreed with staff's recommendations.

Mr. Clark added that a formal public comment period would be provided in addition to any opportunity for participation in the development of draft proposed rules.

Public Comment

The Council requested public comment on staff's recommended rulemaking priorities. The following individuals provided comment:

- **Shirley Weathers, League of Women Voters of Oregon**

Dr. Weathers asked what the process would be for accommodating rulemaking required by SB 246, which is related to Radioactive Materials and Wastes, assuming that bill passes.

Mr. Clark responded that staff had anticipated this rulemaking to be a continuation of the current Radioactive Waste Materials rulemaking, and that it hadn't included a separate entry on the schedule as a result. He stated that the Council should anticipate that this rulemaking is likely to occur, although the scope and timing would depend on the action taken by the legislature.

- **Dan Serres, Columbia Riverkeeper and Power Past Fracked Gas Coalition**

Mr. Serres thanked the Council for its attention to fracking waste issues and the potential health impacts associated with fracking and oilfield wastes. He stated that the current Radioactive Waste Materials rulemaking project and the future rulemaking that is anticipated on this subject were important to ensuring that fracking and oilfield wastes were not disposed of in Oregon. He stated that the organizations that he

represented would be reaching out to their memberships to engage with these projects. Mr. Serres also expressed support for updating the Carbon Monetary Offset Rate as soon as possible.

- Elaine Albrich, Davis, Wright, Tremaine LLP

Ms. Albrich commented that the proposed rulemaking schedule seemed incredibly ambitious, and that it would require a lot of work from both staff and interested stakeholders, particularly in light of the current Protected Areas, Scenic Resources, and Recreation Standards, which she could see being a pretty time-consuming process depending on the alternatives pursued by the Council. Ms. Albrich also recognized the importance of addressing Wildfire Prevention and Response and supported prioritizing that project but encouraged the Council to reconsider its prioritization of issues related to how the requirements of division 021 and 022 apply to Solar PV facilities. She suggested that Council prioritize phase 3 of the Application Review Process to address these issues and prioritize rulemaking to ease decommissioning and financial assurance requirements, particularly for renewable energy facilities. Specifically, Ms. Albrich recommended the Council conduct rulemaking to allow for consideration of the value of scrap in making decommissioning estimates and delay the requirement to post financial assurance for renewable facilities when other commitments, such as a Power Purchase Agreements, are in place. She commented that these issues had also been raised by renewable energy developers. Lastly, Ms. Albrich cautioned the Council against making changes to process. She stated that even procedural changes could become controversial and disputed and could take much more time and effort than expected.

Chair Grail opened Council deliberation on staff's recommended rulemaking schedule.

Council Member Jenkins commented that he did not have any issues with the schedule recommended by staff considering Council's discussion that certain projects should not be delayed if other projects end up being more time consuming than expected. Considering that the proposed schedule did not prioritize projects within individual years, Council Member Jenkins stated that he was ready to make a motion.

Council Member Condon commented that she agreed with the prioritization by year, and asked for confirmation that within each year, the sequencing of projects could change based on legislative action or other factors.

Mr. Clark confirmed.

Council Member Truitt stated that he appreciated staff's presentation, the comments from the public, and the Council's discussion and that he was comfortable with staff's recommendation.

Vice-Chair Howe expressed appreciation for staff's presentation and the thoroughness of the staff report.

Council Member Jenkins motioned Council to approve the 2021-2023 rulemaking schedule as presented by staff.

Vice-Chair Howe seconded the motion.

Chair Grail called on the Secretary to call the roll.

Motion carried by unanimous consent.

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

D. Annual Financial Assurance Update (Action Item)³ – Sisily Fleming, Fiscal Analyst. Ms. Fleming presented recommended templates for financial instruments, and financial institutions for the Council’s pre-approved list and for use by certificate holders in obtaining financial instruments in 2021. The recommended financial institution list adds US Bank to the Council’s 2020 list. The only proposed change to the financial instrument templates is to replace the word “prompt” with “within three business days”.

Secretary Cornett informed Council of questions regarding the language of the financial instrument templates had been raised by Council Member Condon but had not yet been fully evaluated and amended Staff’s recommendation for Council approval of the financial instrument templates. He further noted that Council could still act on the financial institution list, and the templates would be reconsidered at a future meeting to allow staff to fully evaluate all questions presented.

Chair Grail supported Secretary Cornett’s recommendation and desire to evaluate the questions thoroughly. She further requested a motion amending the language to only include the consideration of the financial institutions for use in 2021.

Council Member Condon motioned for Council to approve the 2021 financial institution list as presented.

Council Member Jenkins seconded the motion.

Council Member Condon explained that her questions are related to timing and questioned whether the Council would like to discuss them now or wait for staff to return at a future meeting for the discussion. Chair Grail stated that without Council objection, she believed it appropriate to allow staff the opportunity to evaluate and return to a future meeting for the discussion. Vice-Chair Howe agreed.

Chair Grail called on the Secretary to call the roll.

During the roll call, Council Member Condon clarified that a vote on this item would not authorize any changes to the financial assurance templates. Secretary Cornett confirmed and stated that a separate motion could be made.

Motion carried by unanimous consent.

Chair Grail requested Secretary Cornett craft motion language to incorporate Council Member Condon’s concerns for Council consideration. Secretary Cornett offered a motion to approve the templates as proposed by staff with the caveat that staff will return at a future meeting with additional changes if needed. Council Member Condon confirmed that this motion will include the currently proposed language changes of changing “prompt” to “three business days”.

Council Member Condon motioned for Council to approve the 2021 financial assurance templates as presented.

Council Member Jenkins seconded the motion.

Chair Grail called on the Secretary to call the roll.

Motion carried by unanimous consent.

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

³ Audio for Agenda Item D = 02:24:55 – January 22, 2021

E. Public Comment Period (Information Item)⁴ – The Council accepted oral comments from the following individuals:

- Irene Gilbert

Regarding rulemaking, Ms. Gilbert claimed that the Council is promulgating rules that she believes would be more appropriately approved by the legislature, offering example of Threatened and Endangered Species Rules that require such approval. She further stated that changes creating a Type B amendment procedure have not improved public perception of the Department or the process and assured the Council of continuing litigation. Ms. Gilbert asserted allegations of corruption against the Department and Council for denying public opportunity for a contested case on amendments. She claimed that decisions are being made at the Department without offering the public the opportunity to comment on the appropriateness. She further stressed that significant changes made by the Council should be taken to the legislature for approval and stated that these standards can't violate state law. She then claimed that Council Member Jenkins is not authorized to remain on the Council beyond the term limits and will consider Council decisions made while he remains challengeable. She concluded her comments by expressing her unappreciation of the Type B process and requested its removal.

- Dan Serres

Mr. Serres expressed his gratitude to Department staff for their careful review of the Request for Exemption from NEXT Renewable Energy, stating that the idea of renewable diesel is promising and deserves consideration by EFSC. He informed Council that project proponents for this exemption request were involved in a project in Odessa, Washington that failed. He encouraged the Council's detailed review of the Organizational and Expertise and Structural Standard for this project. Mr. Serres also stated concerns regarding land use authorization in and around the site, and praised staff for their review.

There were no further public comments.

F. Golden Hills Wind Project, Council Review of the Proposed Order on Request for Amendment 6 of the Site Certificate (Action Item)⁵ – Sarah Esterson, Senior Policy Advisor. Ms. Esterson presented the Proposed Order on Request for Amendment 6 of the Golden Hills Wind Project site certificate. The amendment proposes to extend the construction completion deadline by 18 months to December 31, 2022; add approximately 534 acres to the facility micro-siting corridor to adjust the final location of access roads and collector lines; and, amend preconstruction condition language to align with a phased construction schedule, amending 9 previously imposed site certificate conditions related to the Council's Historic, Cultural and Archeological standard, and 1 previously imposed condition related to the Council's Fish and Wildlife Habitat standard. For more information visit the [Golden Hills Wind](#) project page.

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

During the presentation the following discussion occurred:

Council Member Winters referred to the question of need and the statement that an applicant only provides an explanation of need and the Department accepts it without review criteria. She expressed concern over whether this removes Council discretion in the event an applicant provides an insufficient explanation. She requested that the Order be modified to add the explanation of need was deemed to be reasonable.

⁴ Audio for Agenda Item E = 02:37:08 – January 22, 2021

⁵ Audio for Agenda Item F = 02:49:30 – January 22, 2021

Secretary Cornett agreed that the change could be made in the findings of the Order and reminded Council that the rules have since changed eliminating this issue from most future projects.

Council Member Condon asked whether the rules limit the number of extensions that can be requested.

Ms. Esterson stated that for projects that started prior to October 2017, there is not a limit on the number of extension requests allowed. But, project approved after October 2017 are limited to two extensions of the construction commencement and completion deadlines.

Council Member Condon referred to page 36 and questioned whether the PPA (power purchase agreement) was provided to staff during their review of the financial assurance.

Ms. Esterson stated that she was provided with links to information regarding the existence of the agreement but had not been provided the executed agreement.

During review of the proposed amended conditions under Council's Historic, Cultural and Archeological Resources standard, Council Member Condon expressed concern for removal of a requirement for onsite workers to be trained in the location and avoidance of previously identified cultural resources. She stated that seeing something on a map is different than someone telling you about the resources and what they look like.

Ms. Esterson explained that workers would still receive Worker Environmental Awareness Training, as provided in the Cultural Resource Management Plan, through requirements of an existing condition, and would also rely upon constraint mapping to inform work and avoidance areas. The proposed condition change is intended to clarify that workers are trained how to identify resources not previously identified and on areas that must be avoided, due to presence of cultural resources, which are identified on maps and demarcated with flagging.

Council Member Condon commented that the change from a 200 to 15 feet buffer distance in the CRMP seemed drastic and requested further explanation.

Ms. Esterson responded that the basis used to establish the 200-foot buffer distance used in older site certificates is unclear and is not currently considered a best management practice by SHPO. However, it was considered a standard practice when the site certificate condition was written, it was typically imposed where there wasn't a lot of subsurface (shovel probe) work done.

Chair Grail expressed concern over the proposed decrease in buffer distance which creates reason for pause.

Ms. Esterson reiterated that the decrease only impacts five of the 17 resources identified within the site boundary. The applicant's specialized consultant recommends that these five resources are not resources that need to be protected, however, they have proposed the 15 foot buffer because SHPO has not yet provided concurrence. She stated that the 200-foot buffer distance is still being applied for all other previously identified resources and would be required should SHPO not concur.

Council Member Jenkins stated that because resources would be demarcated with flagging, workers on the site would be able to visualize the avoidance area.

Chair Grail recalled a public comment questioning the need for confidentiality of the map and appreciated Ms. Esterson mentioning the specific statutes that require such classification.

Council Member Condon questioned whether the Oregon California Historic Trails Advisory Council is the only member association that may work for the same purpose.

Ms. Esterson stated that she believed that OCTA still exists, but the advisory Council does not.

Council member Condon asked about the difference between “significant” adverse impacts and adverse impacts.

Ms. Esterson responded that the standard requires Council to find that a proposed facility, taking into account mitigation, would not be likely to result in significant adverse impacts. In other words, the standard does not prohibit any impacts, only impacts that would be significant adverse impacts that would be unmitigable.

Council Member Condon stated the original language related to perching devices on transmission poles was very specific and the amendment language is very broad related to spiral markers in Grass Valley Canyon. She questioned whether Grass Valley Canyon is a defined area for the purposes of this requirement.

Ms. Esterson pointed to the area of Grass Valley on a map and stated that language could be added to include coordinates if desired.

Council Member Condon stated preference for amending the language to be more specific to include a sufficient number of markers and appropriate placement.

Council Member Jenkins suggested that language be amended “and install spiral markers over Grass Valley Canyon, in consultation with ODFW” to satisfy Council Member Condon’s concerns, to which she agreed.

Chair Grail questioned whether any new problems would be created for humans or other avian species through use of spiral markers.

Ms. Esterson offered that if unintended consequences are discovered additional mitigation would be required.

At the conclusion of the presentation Secretary Cornett offered to recap the changes requested by the Council members during the discussion for Council concurrence.

Change 1: Amend finding of OAR 345-027-0385 to reflect agreement with the site certificate holder’s explanation of need.

Change 2: Amend Table 5 Analysis to replace wooden posts with T posts per the comment from the Confederated Tribe of the Umatilla Indian Reservation.

Change 3: Amend Condition JGEN-FW-04 to require placement of spiral markers over Grass Valley Canyon in consultation with ODFW.

Council Member Jenkins motioned to approve the Proposed Order as the Final Order and issue the sixth amended site certificate to include the changes outlined by Secretary Cornett.

Vice Chair Howe seconded the motion.

Chair Grail called on the Secretary to call the roll.

Motion carried by unanimous consent.

Final Meeting Comments

Vice Chair Howe stated it is appropriate for Council Members to comment when inappropriate comments are made during the public comment period, such as personal attacks and insults towards Council members.

Council Member Winters supported the Vice-Chair's comments agreeing that personal attacks are not acceptable.

Council Member Jenkins appreciated the support of his fellow members and the letter provided by Patrick Rowe, Assistant Attorney General, explaining Council's legal authority to extend appointment terms in the event of appointment vacancies.

Chair Grail stated that legal counsel is present to advise the Council against knowingly or willfully doing something wrong.

Council Member Condon questioned whether protocols allow for legal counsel to respond to such statements during the public comment period itself, to clarify any legal concerns made to the same audience.

Chair Grail stated that Council's responsibility during the public comment period is to receive, not debate, the comments provided; going on to request that the discussion be reiterated in the minutes and suggested an agenda item at a future meeting.

Secretary Cornett agreed with Chair Grail regarding the intent of the public comment period and added that Council members may request staff or legal counsel to provide clarification during, or at the conclusion of, the public comment period if desired, or during a secretary report of a future meeting; to which, Mr. Rowe concurred. Secretary Cornett went on to offer that Council members may also request clarifications be made at future meetings during the secretary report.

Council Member Condon appreciated the explanation stressing the importance of timely addressing statements that aren't factual.

Council Member Truitt mentioned the opening remarks attempt to address the issue of respect and supported the other member's comments.

Chair Grail appreciated the Council for their support during her first meeting as Chair.

Meeting adjourned at 1:19 p.m.