Opening Items:

- Call to Order
- Roll Call
- Announcements
Announcements:

- Reminder that this meeting is being held in its entirety via teleconference and webinar.
- Reminder to Council and to anyone addressing the Council to please remember to state your full name clearly, and no not use the speakerphone feature, as it will create feedback.
- You may sign up for email notices by clicking the link on the agenda or the Council webpage.
- You are also welcome to access the online mapping tool and any documents by visiting our website.
Announcements continued:

- Please silence your cell phones
- Please use the “Raise Your Hand” feature in Webex to speak during the public comment period, or press *3 to raise your hand if you are participating by telephone.
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.
Agenda Item A
(Action Item & Information Item)

Consent Calendar
February 25, 2022

• January Council Meeting Minutes
• Council Secretary Report
Agenda Item B
(Information, Hearing & Action Items)

Obsidian Solar Center
- Proposed Order on Application for Site Certificate
- Proposed Contested Case Order
- Hearing
- Council Decision

Presented by:
Kellen Tardaewether, Senior Siting Analyst, Oregon Department of Energy
Jesse Ratcliffe, Senior Assistant Attorney General, counsel to Council
Council Review of Proposed Order

Location of Proposed Facility

- Applicant: Obsidian Solar Center LLC
- Proposed Facility: 400 MW solar facility
- Location: 3,921-acre (6.1 sq. mile) site boundary in north Lake County
Description of Proposed Facility

- Solar Photovoltaic (PV) Energy Facility
- Related or Supporting Facilities:
  - dispersed or centralized flow battery storage systems;
  - up to four collector substations (1 acre/each);
  - 115/500 kilovolt (kV) step-up substation (3 acres);
  - up to two O&M buildings;
  - perimeter fencing and security gates;
  - approximately two-mile 115 kV generation-tie (gen-tie) transmission line.
# Procedural History Summary for Obsidian Solar Center ASC

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Responsible Party</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of Intent</td>
<td>Applicant</td>
<td>Jan 16, 2018</td>
</tr>
<tr>
<td>Preliminary Application for Site Certificate</td>
<td>Applicant</td>
<td>Sep 25, 2018</td>
</tr>
<tr>
<td>Application for Site Certificate</td>
<td>Applicant</td>
<td>Oct 30, 2019</td>
</tr>
<tr>
<td>Draft Proposed Order (DPO)</td>
<td>Department</td>
<td>Mar 12, 2020</td>
</tr>
<tr>
<td>Public Hearing on the DPO</td>
<td>EFSC/Department</td>
<td>Jul 20, 2020</td>
</tr>
<tr>
<td>Review of DPO and Comments</td>
<td>EFSC</td>
<td>Aug 21, 2020</td>
</tr>
<tr>
<td>Proposed Order and Notice of Contested Case</td>
<td>Department</td>
<td>Oct 9, 2020</td>
</tr>
<tr>
<td>Contested Case Proceeding</td>
<td>Hearing Officer/Parties</td>
<td>Nov 9, 2020 – Jan 26, 2022</td>
</tr>
<tr>
<td>Review of Proposed Order and Proposed Contested Case Order</td>
<td>EFSC</td>
<td>Feb 25, 2022</td>
</tr>
<tr>
<td>Final Decision on Approval/Denial of Site Certificate</td>
<td>EFSC</td>
<td>Feb 25, 2022 or TBD</td>
</tr>
</tbody>
</table>
Council’s General Standard of Review requires the Council to find that a preponderance of evidence on the record supports the conclusion that a proposed facility would comply with the requirements of EFSC statutes, and the siting standards adopted by the Council and that a proposed facility would comply with all other Oregon statutes and administrative rules applicable to the issuance of a site certificate for the proposed facility.
Recommended General Standard Condition 1: allots up to three-years after the date of Council action for the applicant to begin construction, and three years from that date to complete construction. (Page 23)

Recommended General Standard Condition 3: The certificate holder shall design, construct, operate, and retire the facility: Substantially as described in the site certificate; in compliance with applicable Council rules, state and local laws, rules and ordinances in effect at the time the site certificate is issued; and all applicable permit requirements of other state agencies. (Page 24)

Recommended General Standard Condition 6: Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. (Page 24)
Section IV.B. Organizational Expertise: OAR 345-022-0010

Subsections (1) and (2) of the Council’s Organizational Expertise standard require that the applicant demonstrate its ability to design, construct and operate the proposed facility in compliance with Council standards and all site certificate conditions, and in a manner that protects public health and safety, as well as its ability to restore the site to a useful, non-hazardous condition. Subsections (3) and (4) address third party permits.
Section IV.B. Organizational Expertise: OAR 345-022-0010 (Page 27)

Recommended Organizational Expertise Condition 1: requires reporting to the Department any changes of the parent company that could impact the certificate holder’s access to the resources or expertise of the parent companies. (Page 29)

Recommended Organizational Expertise Condition 3, 4, and 5: relates to contractor compliance and certificate holder accountability for compliance with all site certificate conditions, and reporting requirements for any violations of conditions and incidents. (Page 30)
Section IV.C. Structural Standard: OAR 345-022-0020

Council’s Structural Standard generally requires the Council to evaluate whether the applicant has adequately characterized the potential seismic, geological and soil hazards of the site, and whether the applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment from these hazards.
Recommended Structural Standard Condition 1 requires that a site-specific geotechnical investigation in accordance with the 2014 version of the Oregon State Board of Geologist Examiners Guideline for Preparing Engineering Geologic Reports, or newer guidelines if available, and lists the information to be included in report based on applicant representation. (Page 36)
The Soil Protection standard requires the Council to find that, taking into account mitigation, the design, construction, and operation of a proposed facility are not likely to result in a significant adverse impact to soils.
Recommended Soil Protection Condition 1: requires DEQ-issued NPDES 1200-C permit, including final Erosion Sediment Control Plan, and evidence of compliance with the permit to be reported to the Department. Results of the preconstruction Geotechnical Investigation to develop appropriate, site-specific erosion and dust control measures, to be reflected in the Erosion and Sediment Control Plan. (Page 40)
Recommended Soil Protection Condition 2: requires that the applicant, prior to construction, finalize a Spill Management Plan (Attachment I-2). (Page 43)

The Plan describes material handling and management procedures, training requirements, response procedures, and reporting requirements for both facility construction and operation and includes language to serve as the language regarding a Spill Prevention Control and Countermeasure Plan (SPCC).
Section IV.E. Land Use: OAR 345-022-0030

The Land Use standard requires the Council to find that a proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission (LCDC). Under ORS 469.504(1)(b)(A), the Council may find compliance with statewide planning goals if the Council finds that a proposed facility “complies with applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted...”
### Table 2: Lake County Applicable Substantive Criteria

<table>
<thead>
<tr>
<th>Section</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 3 Agricultural Use Zone: A-2</td>
<td>Section 3.02 Permitted Uses – Subsection C</td>
</tr>
<tr>
<td></td>
<td>Section 3.04 Conditional Uses – Subsection B</td>
</tr>
<tr>
<td></td>
<td>Section 3.05 Dimensional Standards – Subsections F, G and H</td>
</tr>
<tr>
<td>Article 18 Significant Resource (SR) Combining Zone</td>
<td>Section 18.05 Reduced Preservation Review Criteria – Subsection D</td>
</tr>
<tr>
<td>Article 20 Supplementary Provisions</td>
<td>Section 20.01 Supplementary Provisions</td>
</tr>
<tr>
<td></td>
<td>Section 20.08 Vision Clearance Area</td>
</tr>
<tr>
<td></td>
<td>Section 20.09 Riparian Habitat – Subsections A, B and C</td>
</tr>
<tr>
<td></td>
<td>Section 20.12 Fences</td>
</tr>
<tr>
<td></td>
<td>Section 20.13 Compliance with and Consideration of State and Federal Agency Rules and Regulations</td>
</tr>
<tr>
<td>Article 24 Conditional Uses</td>
<td>Section 24.01 Authorization to Grant or Deny Conditional Uses – Subsections A</td>
</tr>
<tr>
<td></td>
<td>Section 24.18 Renewable Energy Facilities</td>
</tr>
<tr>
<td></td>
<td>Section 24.19 Criteria for Nonfarm Uses, Excluding Farm Related or Accessory Uses, in an A-1 or A-2 Zone</td>
</tr>
<tr>
<td>Lake County Comprehensive Plan</td>
<td>Goal 2 Planning Process – Policies 17 and 18</td>
</tr>
<tr>
<td></td>
<td>Goal 3 Agricultural Lands – Policy 12</td>
</tr>
<tr>
<td></td>
<td>Goal 5 Open Space, Scenic and Historic Areas and Natural Resources – Policies 3, 4, 5, 8, 10, 13, 14 and 16</td>
</tr>
<tr>
<td></td>
<td>Goal 6 Air, Water and Land Resource Quality – Policies 1, 3, 4, 5 and 11</td>
</tr>
<tr>
<td></td>
<td>Goal 9 Economic Development – Policies 1, 6 and 8</td>
</tr>
<tr>
<td></td>
<td>Goal 11 Public Services and Facilities – Policies 1, 4 and 6</td>
</tr>
<tr>
<td></td>
<td>Goal 12 Transportation – Policy 8</td>
</tr>
<tr>
<td></td>
<td>Goal 13 Energy Conservation – Policies 1 and 3</td>
</tr>
<tr>
<td></td>
<td>Goal 14 Urbanization – Policy 9</td>
</tr>
</tbody>
</table>
Section IV.E. Land Use: OAR 345-022-0030 (Page 60)

Article 24: Conditional Uses

Section 24.19 Criteria for Nonfarm Uses, Excluding Farm Related or Accessory Uses, in an A-1 or A-2 Zone. Nonfarm uses, excluding farm related or farm accessory uses, may be approved in an A-1 or A-2 zone upon findings that each such use:

A. Is compatible with farm uses described in ORS 215.203(2) and is consistent with the intent and purposes set forth in ORS 215.243;

B. Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use.
Pursuant to ORS 469.504(1)(b)(B), non-compliance with a statewide planning goal requires a determination by the Council that an exception to Goal 3 is warranted under ORS 469.504(2) and the implementing rule at OAR 345-022-0030(4).

- Recommended Reasons Supporting an Exception
  - Minimal Impacts to Agriculture
  - Local Economic Benefits (Recommended Land Use Condition 7)
- Significant Environmental, Economic, Social and Energy Consequences
- Compatibility of Adjacent Uses
The Protected Areas standard requires the Council to find that, taking into account mitigation, the design, construction and operation of a proposed facility are not likely to result in significant adverse impacts to any protected area as defined by OAR 345-022-0040.

<table>
<thead>
<tr>
<th>Protected Area and Rule Reference</th>
<th>Distance and Direction from Proposed Facility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Devil’s Garden Lava Bed, BLM Area of Critical Environmental Concern (ACEC) OAR 345-022-0040(o)</td>
<td>4 miles, north</td>
</tr>
<tr>
<td>Connelly Hills BLM ACEC and Research Natural Area (RNA) OAR 345-022-0040(o)</td>
<td>5.3 miles, southwest</td>
</tr>
<tr>
<td>Table Rock BLM ACEC and RNA OAR 345-022-0040(o)</td>
<td>6.9 miles, south</td>
</tr>
<tr>
<td>Fort Rock State Natural Area OAR 345-022-0040(i)</td>
<td>9.2 miles, northwest</td>
</tr>
<tr>
<td>Black Hills BLM ACEC/RNA OAR 345-022-0040(o)</td>
<td>9.7 miles, southeast</td>
</tr>
<tr>
<td>Lost Forest/Sand Dunes/Fossil Lake BLM ACEC OAR 345-022-0040(o)</td>
<td>14.4 miles, east</td>
</tr>
<tr>
<td>Summer Lake Wildlife Area OAR 345-022-0040(p)</td>
<td>19 miles, south</td>
</tr>
</tbody>
</table>
The Retirement and Financial Assurance standard requires a finding that the proposed facility site can be restored to a useful, non-hazardous condition at the end of the facility’s useful life, should either the applicant (certificate holder) stop construction or should the facility cease to operate. In addition, it requires a demonstration that the applicant can obtain a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.
Section IV.G. Retirement and Financial Assurance: OAR 345-022-0050

Restoration of the Site Following Cessation of Construction or Operation:

- Proposed facility is located entirely within Agricultural Use (A-2) zoned land and is within ODFW’s mapped big-game winter range habitat (Category 2). Under recommended Retirement and Financial Assurance Condition 2 a retirement and decommissioning plan would have to be reviewed and approved by Council which would establish the conditions that constitute compliance with the retirement standard. (Page 95)
Estimated Cost of Site Restoration:

**Recommended Retirement and Financial Assurance Condition 5:** Before beginning construction of the facility, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The total bond or letter of credit amount for the facility is $28.8 million dollars (Q3 2018 dollars), to be adjusted to the date of issuance, and adjusted on an annual basis thereafter, as described in sub-paragraph (b) of this condition.***
The EFSC Fish and Wildlife Habitat standard requires the Council to find that the design, construction and operation of a facility is consistent with the Oregon Department of Fish and Wildlife’s (ODFW) habitat mitigation goals and standards, as set forth in OAR 635-415-0025.
### Council Review of Proposed Order

**Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060** (Pages 108-110)

*Habitat Types and Categories in the Analysis Area and Potential Impacts to Fish and Wildlife Habitat:*

<table>
<thead>
<tr>
<th>Habitat Type</th>
<th>Perm.</th>
<th>Temp.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category 2</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sagebrush Shrubland</td>
<td>3,419.21</td>
<td>0.00</td>
</tr>
<tr>
<td>Playa</td>
<td>16.91</td>
<td>0.00</td>
</tr>
<tr>
<td>Sand Dune</td>
<td>108.78</td>
<td>0.03</td>
</tr>
<tr>
<td>Non-sagebrush Shrubland</td>
<td>0.00</td>
<td>0.15</td>
</tr>
<tr>
<td>Non-native Forb</td>
<td>42.77</td>
<td>0.05</td>
</tr>
<tr>
<td><strong>Category 6</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agricultural Lands</td>
<td>1.00</td>
<td>0.56</td>
</tr>
<tr>
<td>Developed</td>
<td>0.00</td>
<td>0.21</td>
</tr>
</tbody>
</table>

**Habitat Impact Summary**

- Estimated Category 2 Impacts = 3,587.67
- Estimated Category 6 Impacts = 1.0

Notes: Perm. = Permanent; Temp. = Temporary
Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060

Recommended Fish and Wildlife Habitat Condition 1 requires the applicant to submit the Revegetation and Noxious Weed Control Plan for review and approval. (Page 111)
Recommended Fish and Wildlife Habitat Condition 2 requires the submission and finalization of the Habitat Mitigation Plan (HMP), based upon Option 3 (Working Lands Improvement Program, WLIP, covering lands equivalent to 1.1 acre for every 1 acre of Category 2 habitat permanently impacted). (Pages 114-116)
Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060

Section 3.3 of the Habitat Mitigation Plan (HMP) describes the Working Lands Improvement Program (WLIP) Agreements which are legally binding agreements, authorizing Applicant to implement the WLIP consistent with the HMP and obligate the property owner and successors to manage and operate the land consistent with the goals of the WLIP for the life of the facility to provide for mitigation to achieve a no net loss of habitat quality or quantity, and provide a net benefit of habitat quality.
The Threatened and Endangered Species standard requires the Council to find that the design, construction, and operation of the proposed facility are not likely to cause a significant reduction in the likelihood of survival or recovery of a fish, wildlife, or plant species listed as threatened or endangered by Oregon Department of Fish and Wildlife (ODFW) or Oregon Department of Agriculture (ODA).
The Scenic Resources standard requires the Council to find that visibility of proposed facility structures, plumes, vegetation loss and landscape alterations would not cause a significant adverse impact to identified scenic resources and values. To be considered under the standard, scenic resources and values must be identified as significant or important in local land use plans, tribal land management plans, and/or federal land management plans. (Page 125)

**Scenic Resources:**
- Table Rock ACEC
- Oregon Outback National Scenic Byway
- Christmas Valley National Backcountry Byway

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake County</td>
<td>Lake County Comprehensive Plan (Lake County Planning Commission, 1980)</td>
</tr>
<tr>
<td>Resource Area</td>
<td></td>
</tr>
<tr>
<td>Bureau of Land Management</td>
<td>BLM Handbook 8357-1 Byways (BLM 1993)</td>
</tr>
<tr>
<td>ASC Exhibit R</td>
<td></td>
</tr>
</tbody>
</table>
Council Review of Proposed Order

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

Section (1) of the Historic, Cultural and Archaeological Resources standard generally requires the Council to find that a proposed facility is not likely to result in significant adverse impacts to identified historic, cultural, or archaeological resources.
Recommended Historic, Cultural and Archeological Condition 1 requires the certificate holder to implement the Archeological Testing and Excavation Methodologies Plan and the finalization of provisions in the draft Cultural Mitigation and Monitoring Plan (CMMP). (Page 136)
Recommended Historic, Cultural and Archeological Condition 2 requires the applicant to comply with the conditions listed in the SHPO Archaeological Permits and require that the duration of the permit governance be consistent with the construction timeframes identified in recommended General Standard of Review Condition 1 and to coordinate with SHPO to administratively renew or extend the permits as necessary. (Page 137)
The Recreation standard requires the Council to find that the design, construction, and operation of a facility would not likely result in significant adverse impacts to “important” recreational opportunities. Therefore, the Council’s Recreation standard applies only to those recreation areas that the Council finds to be “important,” utilizing the factors listed in the subparagraphs of section (1) of the standard.

<table>
<thead>
<tr>
<th>Recreational Opportunity</th>
<th>Distance and Direction from Site Boundary</th>
<th>Special Designation/Management</th>
<th>Degree of Demand</th>
<th>Outstanding/Unusual Recreational Quality</th>
<th>Availability/Rareness</th>
<th>Irreplaceable/Irretrievable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Devil’s Garden Lava Bed</td>
<td>4.0 miles to north</td>
<td>Area of Critical Environmental Concern/Wilderness Study Area by BLM</td>
<td>Low</td>
<td>Off-highway vehicle use; day use; Derrick Cave lava tube and other lava tubes within the ACEC.</td>
<td>Recreational opportunities are somewhat common in the area.</td>
<td>Relatively irreplaceable</td>
</tr>
<tr>
<td>Connley Hills</td>
<td>5.3 miles to southwest</td>
<td>ACEC / Research Natural Area by BLM</td>
<td>Low</td>
<td>Off-highway vehicle use; day use.</td>
<td>Recreational opportunities are somewhat common in the area.</td>
<td>Replaceable</td>
</tr>
</tbody>
</table>
The Council’s Public Services standard requires the Council to find that a proposed facility is not likely to result in significant adverse impacts on the ability of public and private service providers to supply sewer and sewage treatment, water, stormwater drainage, solid waste management, housing, traffic safety, police and fire protection, health care, and schools.
Section IV.M. Public Services: OAR 345-022-0110

Traffic Safety:
Recommended Public Services Condition 1 and 2 include requirements for notification and complaints for fugitive dust issues and the finalization and implementation Dust Abatement and Management Control Plan of a Council Review of Proposed Order (Page 154)
Traffic Safety: Recommended Public Services Condition 3 requires review, approval, and implementation of a Traffic Management Plan, which includes the execution of a county road use agreement between Lake County Public Works Department and the applicant, which include traffic BMPs, County road use agreement, and traffic sign coordination provided. (Page 156)
Recommended Public Services Condition 4 (Page 159): requires that the applicant submit a Final Construction/Operation Fire Protection and Emergency Response Plan to the Department. The plan includes:

- Evidence to the Department of its participation in the High Desert RFPA or annexation into the CVRFPD, including the provisions of any agreement and the term of the agreement an updated;
- Fire Prevention Measures;
- Notification to Sherriff's Office;
- Emergency and Fire contact list.
Council Review of Proposed Order

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

The Waste Minimization Standard requires the Council to find that the applicant would minimize the generation of solid waste and wastewater, and that the waste generated would be managed to minimally impact surrounding and adjacent areas.

Recommended Waste Minimization Condition 1 requires a Solid Waste Management Plan be developed and implemented during construction, operation, and retirement of the facility. (Page 166)
Section IV.P. Division 24 Standards


The Siting Standards for Transmission Lines address issues associated with alternating current electric fields and induced currents generated by high-voltage transmission lines. OAR 345-024-0090(1) sets a limit for electric fields from transmission lines of not more than 9 kV per meter at one meter above the ground surface in areas that are accessible to the public. Section (2) requires implementation of measures to reduce the risk of induced current.

Recommended Siting Standards for Transmission Lines Condition 1 requires the applicant to provide landowners within 500 feet of the site boundary a map of the 115-kV transmission line and inform landowners of possible health and safety risks from induced currents caused by electric and magnetic fields. (Page 169)
Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction
IV.Q.1. Noise Control Regulations: OAR 340-035-0035

OAR 340-035-0035 provides the Oregon Department of Environmental Quality (DEQ) noise rules for industry and commerce and establishes noise limits for new industrial or commercial noise sources based upon whether those sources would be developed on a previously used or previously unused site.
Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

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

**Recommended Noise Control Condition 1:** based on applicant-representations for reducing construction-related noise, requires the applicant to develop a noise complaint response system which includes notification to nearby residents, location of noise-generating equipment away from residences, and time restrictions for use of the pneumatic pile. (Page 174)
IV.Q.1. Noise Control Regulations: OAR 340-035-0035

Recommended Noise Control Condition 2: requires the submission of a noise summary report presenting the sound power levels (in dBA) of noise generating equipment and provide an updated noise analysis to demonstrate compliance with the ambient degradation standard and maximum allowable threshold. (Page 183)
Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

IV.Q.2. Removal-Fill (Page 184)

The Oregon Removal-Fill Law (ORS 196.795 through 196.990) and Department of State Lands (DSL) regulations (OAR 141-085-0500 through 141-085-0785) require a removal-fill permit if 50 cubic yards or more of material is removed, filled, or altered within any “waters of the state.”
Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

IV.Q.3. Water Rights Page 185

Under ORS Chapters 537 and 540 and OAR Chapter 690, the Oregon Water Resources Department (OWRD) administers water rights for appropriation and use of the water resources of the state.

Table 16: Estimated Worst-Case Annual Water Use from Construction and Operation

<table>
<thead>
<tr>
<th>Water Use Description</th>
<th>Quantity/Units</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Construction</strong></td>
<td></td>
</tr>
<tr>
<td>Dust Suppression</td>
<td>16,208,500</td>
</tr>
<tr>
<td>Soil Maintenance</td>
<td>677,500</td>
</tr>
<tr>
<td>Equipment Washing</td>
<td>8,500</td>
</tr>
<tr>
<td>Fire Suppression</td>
<td>171,500</td>
</tr>
<tr>
<td>Potable Water (bottled/tap drinking water)</td>
<td>84,000</td>
</tr>
<tr>
<td><strong>Operation</strong></td>
<td></td>
</tr>
<tr>
<td>O&amp;M Building/Septic Systems</td>
<td>875,000</td>
</tr>
<tr>
<td>Solar Panel Washing</td>
<td>489,000</td>
</tr>
<tr>
<td><strong>Annual Estimated Construction Water Use</strong></td>
<td>17,150,000</td>
</tr>
<tr>
<td><strong>Annual Estimated Operational Water Use</strong></td>
<td>1,364,000</td>
</tr>
</tbody>
</table>

Source: OSCAPPdoc4 ASC 15 OSC ASC Exhibit 0 2019-10-17, Tables O-1 and O-2.
Water for construction and operation would be obtained from the Christmas Valley Domestic Water Supply District.

**Recommended Water Rights Condition 1:** applicant must submit:

- Water provider, water permit or water right number or copy of, and letter from provider confirming water availability to meet construction water demand;
- Confirmation from water provider that water can be used at the facility site given any applicable restrictions of the water right or permit;
- Confirmation whether applicant would need to amend the site certificate to incorporate a water permit/right under Council jurisdiction or provide evidence that its third-party contractor has obtained a water right or permit for water use at the site.
## Council Deliberation on Material Changes to Proposed Order

<table>
<thead>
<tr>
<th><strong>Option 1</strong></th>
<th><strong>Option 2</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staff Recommendation</strong></td>
<td><strong>Conduct straw poll(s) on any desired material changes to the Proposed Order not related to the PCCO. Any desired material changes would need to part of the material change hearing.</strong></td>
</tr>
<tr>
<td>Make no material changes to Proposed Order not related to the PCCO.</td>
<td></td>
</tr>
</tbody>
</table>
Council Review of Hearing Officer’s Proposed Contested Case Order (PCCO)

• General Overview of Contested Case Proceeding
• Parties
• Issues
• Hearing Officer’s PCCO – Findings of Facts, Conclusions of Law and Conditions of Approval
• Council’s authority to adopt, modify or reject the PCCO
Council Review of Hearing Officer’s PCCO

**Issue 1** – Whether the ASC impermissibly includes development within the Fort Rock Planning Area that is more than 600 feet from existing roads in violation of Lake County Zoning Ordinance (LCZO) §24.01(A)(1) and Lake County Comprehensive Plan (LCCP) Goal 2, Policies 10 and 11.

**HO Conclusions of Law** – The limited parties failed to show that the ASC impermissibility includes development within the Fort Rock Planning Area that is more than 600 feet from existing roads in violation of Lake County Zoning Ordinance (LCZO) §24.01(A)(1) and Lake County Comprehensive Plan (LCCP) Goal 2, Policies 10 and 11.
Issue 1
Questions & Straw Poll
Issue 2 – Whether the ASC failed to demonstrate compliance with the conditional use permit requirements for non-farm use in the A-2 zone as required by LCZO 24.19 because the potential impacts including fugitive dust, invasive weeds, competition for water resources, wildlife displacement, and increased thermal energy (heat blooms) would result in a failure to demonstrate that the proposed facility is compatible with farm uses, consistent with the intent and purposes of ORS 215.243, does not seriously interfere with accepted farming practices on adjacent lands, and does not materially alter the stability of the overall land use pattern of the area.
HO Conclusions of Law – The ASC as conditioned in the Department’s Proposed Order complies with the conditional use permit requirements for non-farm use in the A-2 zone as required by LCZO §24.19. The limited parties failed to establish the proposed facility, as conditioned, will seriously interfere with accepted farming practices on adjacent lands, or that the facility will materially alter the stability of the overall land use patterns of the area.
Issue 2
Questions & Straw Poll
Issue 3 – Whether the ASC failed to demonstrate the proposed development will not unduly diminish agriculture from impacts of fugitive dust, invasive weeds, and wildlife displacement caused by removal of native vegetation, as well as heat blooms caused by the proposed facility, or unduly increase related public service costs in violation of LCZO §24.01(A)(1) and LCCP, Goal 2, Policy 17.

HO Conclusions of Law – LCCP Goal 2 Policy 17 is implemented through LCZO §24.01 and 24.19. The In the Matter of the Application for Site Certificate for the Obsidian Solar Center - OAH Case No. 2020-ABC-03504 Page 62 of 110 ASC, as conditioned, demonstrates the proposed facility will comply with LCZO §24.01 and 24.19.
Issue 3
Questions & Straw Poll
Council Review of Hearing Officer’s PCCO

Issue 4 – Whether the ASC failed to demonstrate grounds justifying an exception to LCCP Goal 3, identifying a preference for the preservation of agricultural land, as required by the LCCP and ORS 469.504(2).

HO Conclusions of Law – The ASC provides sufficient information regarding Applicant’s purported bases to allow Council to take an exception to LCCP Goal 3, in accordance with ORS 469.504.
Issue 4
Questions & Straw Poll
Issue 5 – Whether the proposed project as identified in the ASC diminishes the value of the limited parties’ private property and business interests in violation of LCZO §24.01(A)(1) and LCCP Goal 2, Policy 18.

HO Conclusions of Law – The limited parties failed to establish that the proposed facility as set forth in the ASC and conditioned in the Department’s Proposed Order will result in diminution of value to their private property and/or business interests.
Issue 5
Questions & Straw Poll
Issue 6 – Whether the ASC failed to demonstrate that the design, construction, and operation of the proposed facility is not likely to result in significant adverse impacts to soil, taking into account Applicant’s proposed mitigation, in violation of OAR 345-022-0022.

HO Conclusions of Law – The proposed facility as set forth in the ASC and conditioned in this Proposed Order complies with the Council’s Soil Protection standard.
Issue 6
Questions & Straw Poll
Issue 7 – Whether the application proposes development that exceeds the existing capacity of public and private utilities or facilities, including county roads to provide water needed for the construction of the facility, without Applicant providing funds for the increased services, in violation of LCZO §24.01(A); LCCP Goal 11, Policy 1; and LCCP Goal 13, Policy 14.

HO Conclusions of Law – The proposed facility as set forth in the ASC and conditioned in this Proposed Order is not likely to exceed the capacity of public or private utilities, roads, or local emergency services.
Issue 7
Questions & Straw Poll
Issue 8 – Whether the application failed to demonstrate that the proposed development is compatible with existing uses and will not diminish living conditions in violation of LCZO §24.01(A)(1) and LCCP Goal 9, Policy 1.

HO Conclusions of Law – The ASC, as conditioned in the Department’s Proposed Order, demonstrates the proposed facility will comply with LCZO §24.01, Statewide Planning Goal 9, and LCCP Goal 9 Policy 1.
Issue 8
Questions & Straw Poll
Issue 9 – Whether the Department’s Proposed Order erred by imposing a condition limiting the Applicant to 5,000 gallons of water per well per day rather than limiting the Applicant’s water use to a total of 5,000 gallons per day

HO Conclusions of Law – The Department’s Proposed Order erroneously permits excessive water use from wells within the project site and should be corrected to limit Applicant’s use to no more than 5,000 gallons per day from all wells within the project site.
Issue 9
Questions & Straw Poll
PCCO Scrivener Error Review

• Applicant’s Request for Correction of Scrivener’s Errors to PCCO

• Department’s Request for Correction of Scrivener’s Errors to PCCO
PCCO Scrivener Error
Questions & Straw Poll
Material Change Hearing

• Scope of Hearing

• Oral Comments
  • Limited Parties
  • Department
  • Applicant
Material Change Hearing Questions & Straw Poll
## Council Decision on the Final Order

<table>
<thead>
<tr>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staff Recommendation</strong></td>
<td><strong>Approve Proposed Order &amp; PCCO, with Scrivener Error Corrections as the Final Order, as Recommended and Issue Site Certificate Approving Request</strong></td>
<td><strong>Approve Proposed Order &amp; PCCO with Scrivener Error Corrections as Recommended, but with Additional Modifications, as the Final Order and Issue Site Certificate Approving Request</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Approve Proposed Order &amp; PCCO with Scrivener Error Corrections as Recommended, but with Additional Modifications, as the Final Order and Issue Site Certificate Approving Request</strong></td>
<td><strong>Reject Specific Findings of Facts, Conclusions of Law and Conditions of Approval in Proposed Order and/or PCCO, and Issue Final Order Denying Request</strong></td>
</tr>
</tbody>
</table>
Council Deliberation
Agenda Item C

PUBLIC COMMENT

Phone Commenters: Press *3 to raise your hand to make comment, and *3 to lower your hand after you’ve made your comment.

Webinar Commenters: Open the Participant list, hover over your name and click on the “Raise Your Hand icon”.
How to Raise Your Hand in Webex:

**Webinar Participants**
The bottom right of the main window is a set of icons:
   Click on “Participants”
The bottom right of the participant window is a hand icon, click on the hand:
   Clicking on it again will lower your hand.

**Phone Participants**
Press *3 on your telephone keypad to raise your hand.
Press *3 again on your telephone keypad to lower your hand.
Protected Areas, Scenic Resources and Recreation Standards Rulemaking Project Update

February 25, 2022
Christopher M. Clark, Siting Policy Analyst & EFSC Rules Coordinator, ODOE
Presentation Overview

- Background and Procedural History
- Discussion of Issues, Recommendations & Stakeholder Feedback
- Next Steps

(NOTE: The Council will be asked to provide preliminary input on each issue but is not being asked to make a final decision on any issue at this Meeting.)
Background

• **Scope:** Address issues related to the Protected Areas, Scenic Resources, and Recreation Standards and associated rules.

• **Objectives:**
  • Ensure that the standards clearly identify the resources and values they are intended to protect.
  • Ensure that the standards are consistent with ORS 469.310.
  • Improve efficiency and effectiveness of Council’s review processes and procedures by resolving ambiguity, lack of clarity, and inconsistency in rule.
Rulemaking Process

- Initiation of rulemaking
- Development of Draft Proposed Rules (RAC)
- Notice of Proposed Rulemaking
- Formal public comment period
- Adoption of permanent rules
# Procedural History

<table>
<thead>
<tr>
<th>Item</th>
<th>Date</th>
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<tbody>
<tr>
<td>Council initiates rulemaking</td>
<td>October 22, 2020</td>
</tr>
<tr>
<td>Staff solicits written comments</td>
<td>November 6, 2020</td>
</tr>
<tr>
<td>Council review of preliminary feedback</td>
<td>April 23, 2021</td>
</tr>
<tr>
<td>Staff Conducts Rulemaking Workshops</td>
<td>July 28, 2021</td>
</tr>
<tr>
<td>August 18, 2021</td>
<td></td>
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<tr>
<td>October 14, 2021</td>
<td></td>
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<tr>
<td>Council provides feedback on preliminary analysis and recommendations</td>
<td>February 2022</td>
</tr>
</tbody>
</table>
## Summary of Issues & Recommendations

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Staff Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Rules do not require the department or applicant to give notice to or request comment from the manager of a protected area that may be affected by a proposed facility.</td>
<td>Require public notice to be sent to Protected Area Managers. Amend NOI and ASC rules to require Applicant to identify protected area managers.</td>
</tr>
<tr>
<td>2</td>
<td>The Scenic Resources and Recreation Standards limit the scope of Council’s findings to resources in the appropriate analysis area identified in the project order. This is inconsistent with the Protected Area Standard, which contains no similar limitation.</td>
<td>Amend the Recreation and Scenic Resources Standards to allow the Council to consider evidence related to resources outside the analysis area.</td>
</tr>
</tbody>
</table>
## Summary of Issues & Recommendations

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>2.1*</td>
<td>Some stakeholders recommend that the study areas for impacts to Protected Areas, Recreation, and Scenic Resources are too large, especially for renewable energy facilities.</td>
<td>Make no changes at this time.</td>
</tr>
<tr>
<td>2.2*</td>
<td>A stakeholder recommended that the Council limit study areas for impacts to Protected Areas, Recreation, and Scenic Resources to areas within the borders of Oregon.</td>
<td>Make no changes at this time.</td>
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</table>

*Issue raised in whole or part by stakeholders*
### Summary of Issues & Recommendations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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<tbody>
<tr>
<td>3</td>
<td>The Protected Areas standard refers to “designations in effect as of May 11, 2007.” A number of new areas have been designated for protection since that time.</td>
<td>Remove the effective date for designations, allowing the Council to consider impacts to protected areas that are established during the review of a proposed facility.</td>
</tr>
<tr>
<td>4</td>
<td>The Protected Areas standard contains a list of designation categories and specific protected areas that may be incomplete or out of date.</td>
<td>Update and simplify the list and remove specific examples to reduce the need for future rulemaking.</td>
</tr>
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</table>
### Summary of Issues & Recommendations

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<tr>
<th>Description</th>
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<tbody>
<tr>
<td>5</td>
<td>The Protected Areas standard does not list Outstanding Resource Waters as Protected Areas.</td>
</tr>
<tr>
<td>6</td>
<td>The current rule may permit a transmission line or natural gas pipeline to be sited in a protected area when other lesser impact alternatives are available.</td>
</tr>
<tr>
<td>7</td>
<td>The Scenic Resources standard does not specify that resources and values identified as significant or important in state land management plans are protected.</td>
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</table>
### Summary of Issues & Recommendations

<table>
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<tr>
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<tr>
<td>8* The application of new rules or standards to an application for Site</td>
<td>Specify that amended standards will only apply to applications or requests for</td>
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<tr>
<td>Certificate that is under review on or before the effective date of the</td>
<td>amendment filed on or after the effective date of the rules.</td>
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<td>rules could prejudice the applicant.</td>
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<tr>
<td>9* More specificity may be needed in how the Council evaluates visual</td>
<td>Consider in future rulemaking</td>
</tr>
<tr>
<td>10* A stakeholder recommended the Council clarify the criteria for</td>
<td>Make no changes at this time</td>
</tr>
<tr>
<td>identifying important recreational opportunities.</td>
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</table>

*Issue raised in whole or part by stakeholders*
Notice to Protected Area Managers (Issue 1)

**Issue description:** Rules do not require the department or applicant to give notice to or request comment from the manager of a protected area that may be affected by a proposed facility.

**Alternatives:**

1. Take no action. Rely on existing public notification requirements to provide information to managers of protected areas.

2. Amend OAR 345-001-0010(51) or provide policy direction to specify that the managing agency of a protected area that could be impacted by a proposed facility is a “reviewing agency.”

3. Amend rules to require public notice to be given to the managers of a protected area identified in the NOI, ASC, or Request for Amendment.
# Notice to Protected Area Managers (Issue 1)

<table>
<thead>
<tr>
<th>Federal</th>
<th>State</th>
<th>Local/Private</th>
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</thead>
<tbody>
<tr>
<td>U.S. National Parks Service</td>
<td>Oregon Department of Parks and Recreation</td>
<td>The Nature Conservancy</td>
</tr>
<tr>
<td>U.S. Bureau of Land Management</td>
<td>Oregon Department of State Lands*</td>
<td>Private Landowners</td>
</tr>
<tr>
<td>U.S. Forest Service</td>
<td>Oregon Department of Fish and Wildlife*</td>
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<tr>
<td>U.S. Fish and Wildlife Service</td>
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* Current Reviewing Agencies
Notice to Protected Area Managers (Issue 1)

Staff Recommends Alternative 3:

• Adopt interim policy to provide public notice to protected area managers during siting review. Formally amend rules in future rulemaking.

• Amend information requirements to require an applicant to identify protected area manager and contact information in the notice of intent and application for site certificate. (See Att. 3, pages 6, 10.)

• Consider options to collect and publish general information about protected area managers outside of rulemaking.
Questions & Deliberation
Scope of Required Findings (Issue 2)

**Issue description:** The Scenic Resources and Recreation standards both limit the scope of Council’s findings to resources in the analysis area identified in the project order. This is inconsistent with the Protected Area standard, which contains no similar limitation.

**Alternatives:**
1. Make no changes.
2. Amend the Protected Areas standard to limit the scope of Council’s findings to impacts to protected areas within the analysis area.
3. Amend the Recreation and Scenic Resources standards to remove the limitation and allow the Council to consider impacts to scenic resources and recreational opportunities outside the analysis area.
Scope of Required Findings (Issue 2)

Council must find that, taking into account mitigation, the design, construction and operation of the facility are:

OAR 345-022-0040: * * * not likely to result in significant adverse impact to the areas listed below.”

OAR 345-022-0080: * * * not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

OAR 345-022-0100: * * * not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order.
Scope of Required Findings (Issue 2)

Staff Recommends Alternative 3:

• Many stakeholders agreed that there should be consistency in the scope of findings required by Council standards, but there was not consensus on which approach should be pursued.

• Staff recommends Council amend the Recreation and Scenic Resources standards to allow the Council to consider impacts to scenic resources and recreational opportunities outside the analysis area.
Questions & Deliberation
Size of Study Areas (Issue 2.1)

**Issue:** Some stakeholders recommend that the study areas for impacts to Protected Areas, Recreation, and Scenic Resources are too large, especially for renewable energy facilities.

**Alternatives:**
1. Make no changes
2. Reduce the study area for protected areas to 10 miles, or another distance, for all facilities
3. Reduce the study areas for impacts to protected areas, scenic resources, and recreational opportunities to 1 miles, for solar photovoltaic facilities
Size of Study Areas (Issue 2.1)

Current Study Areas - OAR 345-001-0010

- Site Boundary
- Recreational Opportunities – 5 mi.
- Scenic Resources – 10 mi.
- Protected Areas – 20 mi.
Size of Study Areas (Issue 2.1)

**Required Analyses - OAR 345-021-0010**

- **PROTECTED AREAS**
  - Water Use
  - Wastewater Disposal

- **SCENIC RESOURCES**
  - Loss of Vegetation
  - Landscape Alteration
  - Visual Impacts of Structures/Plumes

- **RECREATION**
  - Noise
  - Traffic
  - Loss of Recreational Opportunity
Size of Study Areas (Issue 2.1)

Staff Recommends Alternative 1:

• Many stakeholders agreed that impacts may differ for different types of facilities, but there was no clear consensus on how this should be addressed.

• Some stakeholders commented that current study areas may not be adequate to address visual impacts from larger wind turbines.

• Staff does not have an appropriate empirical basis to recommend changes to the study areas and recommends Council make no changes and consider this issue further in future rulemaking.
Questions & Deliberation
Extent of Study Areas (Issue 2.2)

**Issue:** A stakeholder recommended that the Council limit study areas for impacts to Protected Areas, Recreation, and Scenic Resources to areas within the borders of Oregon.

**Alternatives:**
1. Make no changes
2. Amend rules to specify that study and analysis areas only extend to Oregon’s borders.
Extent of Study Areas (Issue 2.2)

Alternative 1: Study area extends into Washington

Alternative 2: Study area clipped to border
Extent of Study Areas (Issue 2.2)

Staff Recommends Alternative 1:

• Some stakeholders questioned whether Council could, or should, consider resources outside of its jurisdiction. Others recommended that protected areas, scenic resources, and recreation opportunities may be used and valued by Oregonians, regardless of their location.

• Some state and local level resources outside of Oregon may not be protected by standards. Rules still allow for adjustment of Analysis Area, based on information provided in NOI.

• Staff recommends Council make no changes.
Questions & Deliberation
Effective Date of Designations (Issue 3)

**Issue description:** The Protected Areas standard refers to “designations in effect as of May 11, 2007.” A number of new areas have been designated for protection since that time.

**Alternatives:**

1. Amend rule to update the rule to reference the date of adoption of the new rules.
2. Amend rule to remove the date.
3. Amend rule to specify that Council must make findings based on designations in effect on the date the project order is issued.
Effective Date of Designations (Issue 3)

• Omnibus Public Land Management Act of 2009 designated over 100,000 acres of wilderness in Oregon.
• John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 established Devil's Staircase Wilderness and designated over 280 river miles of Wild and Scenic Rivers.
• Nehalem River State Scenic Waterway designated in 2019. A candidate study is currently underway for a 27-mile section of the South Umpqua River.
• OFWC approved establishment of 15,000 acre Minam River Wildlife Area in 2021
• Proposal for Elliott State Research Forest currently under consideration.
Effective Date of Designations (Issue 3)

**Staff Recommends Alternative 2:**

- Staff recommends that Council remove the date to allow the Council to address protected areas that are designated or established while a facility is under review.

- Additional work may be needed to address uncertainty for applicants and clarify process for addressing potential impacts to a protected area established during a review.
Questions & Deliberation
List of Protected Areas (Issue 4)

**Issue description:** The Protected Areas standard contains a list of designation categories and specific protected areas that may be incomplete or out of date.

**Alternatives:**

1. Make no changes.

2. Amend rule to provide updated lists that identify all current protected areas.

3. Amend rule to remove specific protected areas and list only specific categories and designations.
List of Protected Areas (Issue 4)

Staff Recommends Alternative 3:

- Because protected areas may be added, renamed, or redesignated at any time, staff recommends Council remove the specific protected areas from the rule.
- Consider providing more detailed lists as an informational resource that can be updated outside of the formal rulemaking process.
- Amend categories to align with current law, clarify ambiguity, and to add additional categories that are comparable to protected areas included on the current list.
List of Protected Areas (Issue 4)

Federally Designated Areas

- National Parks
- National Monuments
- Wilderness Areas
- Wilderness Study Areas
- Wild and Scenic Rivers
- National Wildlife Refuges
- National Coordination

Areas

- National Fish Hatcheries
- National Scenic and Recreation Areas
- Special Resources Management Units
- Areas of Critical Environmental Concern

- Outstanding Natural Areas
- Research Natural Areas
- Special Interest Areas
- Experimental Forests and Ranges

Addition/Deletion
List of Protected Areas (Issue 4)

State Designated Areas

- State Parks & Waysides
- The Willamette River Greenway
- State Natural Heritage Areas
- The South Slough National Estuarine Research Reserve
- State Scenic Waterways
- State Wildlife Areas, Refuges, and Management Areas
- State Fish Hatcheries
- OSU Agricultural Experimental Areas, Experiment Stations, and Research Centers
- OSU Research Forests
- Elliot State Research Forest?

Addition/Deletion
Questions & Deliberation
Outstanding Resource Waters (Issue 5)

**Issue Description:** The current rule does not list Outstanding Resource Waters as Protected Areas.

**Alternatives:**
1. Make no changes.
2. Add Outstanding Resource Waters to the list of protected areas.

**Staff Recommends Alternative 1:** Because Outstanding Resource Waters are part a federally delegated program under the Clean Water Act, staff recommends Council make no changes.
Questions & Deliberation
Issue description: The current rule may permit a transmission line or natural gas pipeline to be sited in a protected area when other lesser impact alternatives are available.

Alternatives:

1. Make no changes.

2. Amend rule to allow Council to issue a site certificate when Council finds that no alternative routes or sites that would have lesser impacts are practicable.

3. Amend rule to allow Council to issue a site when Council finds that other reasonable routes or sites have been studied and determined to have greater impacts.
Staff Recommends Alternative 2 (with modification):
(2) Notwithstanding section (1), the Council may issue a site certificate for:
(a) A facility that includes a transmission line or a natural gas pipeline or water pipeline proposed to be located in a protected area, if the Council determines that reasonable alternative routes or sites that would avoid the protected area have been studied and that the proposed route is likely to result in fewer adverse impacts to resources or interests protected by Council standards.
(b) * * * (See markup in Att. 3, page 15)
Questions & Deliberation
Identification of Scenic Resources (Issue 7)

Issue: The Scenic Resources standard does not specify that scenic resources and values identified as significant or important in state land management plans are protected under the standard.

Alternatives:

1. Make no changes

2. Specify that scenic resources identified in state land management plans are protected by the Scenic Resources Standard.

3. Specify that scenic resources identified as significant or important in state and regional land management plans are protected.

4. Specify that any scenic resource identified as significant or important by a reviewing agency is protected by the Scenic Resources Standard.
Staff recommends Alternative 3:

- Amend the rule to include significant or important scenic resources identified in state or regional land management plans:
  “A scenic resource is considered to be significant or important if it is identified as significant or important in a land use management plan adopted by one or more local, tribal, state, or federal government or agency.” (Att. 3, page 16.)

- Alternative 4 may also be appropriate, but we do not have enough information at this time to recommend Council pursue this option and recommend it be considered further in future rulemaking.
Questions & Deliberation
Applicability of Updated Rules & Standards (Issue 8)

**Issue description:** A stakeholder recommended that the application of new rules or standards to an application for Site Certificate that is under review on or before the effective date of the rules could prejudice the applicant.

**Alternatives:**

1. Take no specific action
2. Amend OAR 345-001-0020 to clarify that the Council will review an application based on the rules in effect on the date of filing.
3. Adopt a provision in each affected rule or division of rules explaining that applicability of rules and Council standards is determined by the date of filing.
Staff recommends Alternative 3:

• Adopt a provision specifying applicability in each affected standard. As an example, staff recommends the following section be added to OAR 345-022-0040:

  (4) The Council shall apply the standard adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. (Att. 3, page 16)

• Staff recommends the Council consider adopting a general applicability rule in future rulemaking.
Questions & Deliberation
Methodology for Visual Impacts Analyses (Issue 9)

**Issue:** Several stakeholders recommended that more specificity is needed in how the Council evaluates visual impacts under the Protected Areas, Scenic Resources, and Recreation Standards.

**Alternatives:**
1. Make no changes
2. Specify that one or more established methodologies must be used for visual impacts assessments
3. Adopt new rules specifying methods for assessing the visual impacts of energy facilities.
Methodology for Visual Impacts Analyses (Issue 9)

Examples of Established Visual Impact Methodologies

• USFS Scenery Management System
• BLM Visual Resource Management System
• FHWA’s Guidelines for the Visual Impact Assessment of Highway Projects
• OCTA Trails Setting Classifications
Methodology for Visual Impacts Analyses (Issue 9)

1. Prepare facility description
2. Identify facility components with potential for visual impact
3. Determine analysis area
4. Conduct viewshed analysis
5. Identify visual impact receptors
6. Identify Key Observation Points within viewshed
7. Identify affected activities, viewer characteristics, view duration
8. Identify landscape character in potentially affected area
9. Identify proposed mitigation
10. Prepare visual simulations
11. Assess nature and magnitude of visual and landscape character impacts
12. Identify significance of impacts
13. Identify any additional mitigation

Staff recommends Alternative 1:

• There could be significant improvements to the way visual impacts are identified and evaluated within the siting review process.

• Requiring one or more established methodologies to be used in visual impact assessments prepared for an application for site certificate, as described in Alternative 2, may be desirable but warrants a separate rulemaking process.

• Staff recommends Council make no changes at this time, and establish a new rulemaking project to identify and fully vet appropriate visual impact assessment methods.
Questions & Deliberation
Criteria for Important Recreational Opportunities (Issue 10)

**Issue:** A stakeholder recommended the Council clarify the criteria for identifying important recreational opportunities.

**Alternatives:**
1. Make no changes
2. Clarify the criteria used to judge importance
Criteria for Important Recreational Opportunities (Issue 10)

Current Criteria – OAR 345-022-0100

• Any special designation or management of the location
• The degree of demand
• Outstanding or unusual qualities
• Availability or rareness
• Irreplaceability or irretrievability of the opportunity
Criteria for Important Recreational Opportunities (Issue 10)

Staff recommends Alternative 1:
• No specific recommendations were provided during stakeholder engagement process.
• Further consideration of this issue may be appropriate, but Staff does not have enough information at this time to recommend any specific rule changes at this time.
Questions & Deliberation
## Next Steps

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Council provides feedback on preliminary analysis and recommendations</td>
<td>February 2022</td>
</tr>
<tr>
<td>Staff publishes revised analysis and recommendations, solicits additional informal comments</td>
<td>March 2022</td>
</tr>
<tr>
<td>Council considers proposed rules and issues NOPR</td>
<td>April 2022</td>
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<tr>
<td>Public Comment Period on Proposed Rules</td>
<td>May-June 2022</td>
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<tr>
<td>Consideration of Permanent Rules</td>
<td>July 2022</td>
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Public Comments Web Portal Update

February 25, 2022
Wally Adams, Operations and Policy Analyst, ODOE
EFSC Public Comments Portal and Docket System

February 25, 2022
Topics

• Background, Purpose and Scope
• Demo of Comment Portal for a DPO
• Demo of Docket
Business Problem

• Public comment periods are required by statute and administrative rules to occur at several points in the Site Certificate process as well as the Rulemaking process. Comments are currently captured in several channels: emails are most common, but also by written letter, fax and verbally. There is no online system for submitting comments.

• Comments that are received are not readily available to view by the public. They are only available through a public records request or once a comment summary is published.

• Comments must be processed after they are received, meaning that they are catalogued in a single .pdf file with an index. Any attachments received must be included with the comments. In some cases – generally when a large number of comments are received – a summary of the issues must be generated. An index of comments must be generated manually.
The primary objective of the project was to create an online comment portal to capture and display comments submitted by the public. Other objectives included:

• Use existing software platforms for which the State already has licenses and in-house IT resources to develop the system, thereby keeping our costs low.

• Provide people who submit comments with an email acknowledgement.

• Have the ability to generate an index of comments received.

• Have the ability to generate a list of comments in pdf format.

• Create a docket to provide public access to the comments received for a particular project.
Objectives (Continued)

• Through the web-based input form, enable the commenter to associate their comments with specific citations to Council standards, application or DPO sections and page references. The intent is for the system to improve the ability of citizens to provide meaningful content that Staff, the Council, and Applicants can utilize, without crossing the line of providing legal advice.

• Scope:
  • NOI
  • DPO
  • DPO – Type A Amendment
  • DPO – Type B Amendment
  • Formal Rulemaking
  • Informal Rulemaking
Comment Portal and Docket Demo

• The Siting Comments Portal can be found here:


• The Siting Docket can be found here:

https://odoe.powerappsportals.us/en-US/sitingdocket/
BREAK
Council Deliberation
Adjourn