



ENERGY FACILITY SITING COUNCIL

Energy Facility Siting Council Meeting Minutes June 23-24, 2022

- A. 2022 Carbon Dioxide Emissions Standards Rulemaking Hearing (Hearing)¹
- B. Protected Areas Rulemaking Hearing (Hearing)²
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- K. Nolin Hills Wind Power Project, Continuation of Public Hearing on Draft Proposed Order on Application for Site Certificate (Hearing)¹¹
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The meeting materials presented to Council for each agenda item are available online at: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Call to Order: The meeting was called to order on Thursday June 23, at 5:30 PM by Chair Grail.

Roll Call: Vice-Chair Kent Howe, Council Members Hanley Jenkins, Cynthia Condon and Ann Beier were present in person and Chair Marcy Grail and Council Member Perry Chocktoot were present virtually.

¹ Audio/Video for Agenda Item A=01:10:2022-06-23-EFSC-Meeting-Audio

² Audio/Video for Agenda Item B=00:43:41-2022-06-23-EFSC-Meeting-Audio

³ Audio/Video for Agenda Item C=01:14:29-2022-06-23-EFSC-Meeting-Audio

⁴ Audio/Video for Agenda Item D=00:02:29-2022-06-24-EFSC-Meeting-Audio

⁵ Audio/Video for Agenda Item E=00:29:04-2022-06-24-EFSC-Meeting-Audio

⁶ Audio/Video for Agenda Item F = 00:53:13-2022-06-24-EFSC-Meeting -Audio

⁷ Audio/Video for Agenda Item G= 01:21:16-2022-06-24-EFSC Meeting-Audio

⁸ Audio/Video for Agenda Item H=00:00:00-2022-06-24-EFSC-Meeting-Audio

⁹ Audio/Video for Agenda Item I=01:26:15-2022-06-24-EFSC-Meeting-Audio

¹⁰ Audio/Video for Agenda Item J=01:55:17-2022-06-24-EFSC-Meeting-Audio

¹¹ Audio/Video for Agenda Item K=02:06:17-2022-06-24-EFSC-Meeting-Audio

¹² Audio/Video for Agenda Item L=03:12:07-2022-06-24-EFSC-Meeting-Audio

Oregon Department of Energy representatives present in person were Assistant Director for Siting/Council Secretary, Todd Cornett; Senior Policy Advisor, Sarah Esterson; Operations and Policy Analyst, Wally Adams; Siting Policy Analyst and EFSC Rules Coordinator, Christopher M. Clark; and Administrative Specialist, Nancy Hatch. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC, was present virtually.

Agenda Modifications were not requested.

- A. 2022 Carbon Dioxide Emissions Standards Rulemaking Hearing (Hearing)¹³** - Christopher Clark, EFSC Rules Coordinator presided over a rulemaking hearing to solicit public comments on the Council's proposed rules implementing HB 2021 (2021) and updating the carbon dioxide emissions standards in OAR chapter 345, division 024. Written comments must have been received by 5:00 p.m. on June 23, 2022, to be considered. Oral comments will be accepted until the close of the hearing.

In response to Ms. Kathy Moyd's request for a 3-week extension of the comment period, the following conversation occurred.

Council Member Condon questioned whether Council is waiting for additional information from other parties regarding this rulemaking.

Mr. Clark noted in the April EFSC meeting, Council had requested field test data from Tennessee Valley Authority (TVA) and from the Danny Beach Plant in Florida. Staff has contacted General Electric for the data from NextEra and Florida Power and Light. Staff would need to submit a Freedom of Information Act request to TVA to receive their data.

Chair Grail asked if leaving the comment period open based on 1 request would create any perceived unfairness.

Mr. Clark assured any extension of the comment period would be left open for anyone to comment. Staff would be required to re-notice that there is an extension of the comment period and the new timeframe for comments.

Council Member Jenkins expressed his agreement in allowing the extension while noting it should be completed so the Rulemaking can be addressed at the July EFSC meeting.

Vice Chair Howe asked for verification that there are no time issues/constraints that allowing the extension would create.

¹³ Audio/Video for Agenda Item A=01:10-2022-06-23-EFSC-Meeting-Audio

Mr. Clark stated the update to the Carbon Monetary Offset Rate could take effect as early as July 1, 2022, though it is not a statutory requirement. The update can take place at a later date, such as August 1, 2022.

Secretary Cornett clarified the production cycle of the EFSC meetings and packet information times. He noted the time needed to review and summarize comments by staff and Council.

Council Member Jenkins motioned Council leave comments open until July 11, 2022, at 5:00 pm and re notice such.

Vice Chair Howe seconded the motion.

The motion was carried unanimously.

Secretary Cornett noted an agenda modification for June 24, 2022, EFSC meeting. Agenda item H, Adoption of the Permanent Rules for the Carbon Dioxide Emissions Standard Rulemaking will be removed from the June 24, 2022, EFSC agenda.

Christopher Clark, acting as Presiding Officer opened the oral comment period at 5:45 pm.

Kathy Moyd, League of Women Voters of Oregon: Ms. Moyd explained that the League had provided testimony in support of HB 2021 and the Climate Protection Program. She stated that the League recognized that the way “nonemitting electricity” is defined may allow for carbon capture and storage but that the technology is still being developed and recommended that the Council must verify that the generation of electricity under any new site certificates really will be “nonemitting.”

She also explained that the generation of natural gas-powered electricity created in Oregon and exported to another state is not covered by HB 2021 or the Climate Protection Program, and while the amount of emissions from exported electricity is currently very small it could increase as other states start to buy electricity. She recommended that adoption of the proposed rules could provide a way to limit the emissions of exported electricity.

Ms. Moyd explained that HB 2021 specifies an amendment to site certificate could not be approved if it would significantly increase the gross carbon dioxide emissions. She recognized that “significantly increase” is an ambiguous term, but that there was not a particular value that could be assigned given the decreasing clean energy targets established by the bill. She explained that the League was concerned that existing rules provide that an increase of fuel consumption of less than 10% would not require an amendment, and that the League would not consider a corresponding 10% increase in carbon dioxide emissions to be insignificant. She recommended that the rules should be amended to delete this provision, and that the proposed rules should also be updated to specify that “an amendment will not be approved if it would significantly increase the gross

carbon emissions.” She also recommended that the extension of the expiration date for a fossil fueled power plant should be precluded unless a facility will capture, sequester, and restore all carbon dioxide emissions.

Brendan McCarthy, Portland General Electric Company (PGE): Mr. McCarthy explained PGE’s history of work to reduce its emissions and support for policies that require those reductions, including the 1997 carbon dioxide standards. Mr. McCarthy explained that PGE read the proposed rules to nullify the direction from the legislature to allow approval of a site certificate amendment or change operations of a site up to a level below a significant increase by referencing the rule that allows entities to make changes without an amendment, so that if PGE were to make certain changes, the emissions from those changes would need to be zero. He explained that PGE is concerned that the proposed language would limit PGE’s ability to think innovatively or creatively regarding the transition of their existing generation fleet in pursuit of achieving the 2030 and 2040 emissions reduction targets.

Mr. McCarthy explained that PGE believes the legislature intended for PGE and EFSC to be creative in how to utilize existing plants and that this may include a modest increase in emissions at one site with a decrease in overall system emissions. He explained that PGE had submitted suggested language in their written comments which they believe is consistent with the legislature’s intent to spur innovation while continuing to reduce carbon emissions.

Jake Stephens, NewSun Energy: Mr. Stephens explained that he agreed with Ms. Moyd’s request for the opportunity to respond to other oral and written comments. He explained that NewSun disagrees with PGE’s suggestion that emissions at individual facilities may still go up. He stated that there was not a universe en route to 0% emissions by 2040 in which gas plants’ annual emissions are not being radically reduced and that innovation and creativity should not push emissions upward. He explained that if gas plants are running substantially less, they should be emitting substantially less even if per unit emissions go up slightly. He recommended that the Council should make sure that any application for permit extensions are in compliance with the 2040 requirements for 0% emissions, perhaps with some exceptions for emergency system conditions.

Mr. Stephens explained that NewSun Energy believes that existing thermal generating units do have a useful role in successful decarbonization, and that the Council should consider permit extensions intended to facilitate progress towards the requirements of HB 2021. He also noted that there may also be thermal units that are intended to be non-fossil fueled units such as whole green hydrogen plants or biodiesel reciprocating engines which would be greenhouse gas free and could provide substantial benefits to the world, rate payers, and system reliability. He recommended that having that an exception for thermal units which consume a de minimis amount of natural gas in the system for emergency conditions could help protect us from fuel shortages or blackouts, as has happened in Texas and California. He suggested this could be allowed and compliant with HB 2021, which prohibits

the permitting of new fossil power plants but allows for backups in discreet, highly limited events.

Daniel Serres, Columbia RiverKeeper: Mr. Serres stated that Columbia RiverKeeper had submitted written comments with Verde, Rogue Climate, Earthjustice and Friends of the Columbia Gorge. He explained that RiverKeeper and the other commenters support the proposal to increase the monetary offset rate by the full amount currently allowed under Oregon Law and staff recommendations to reset emissions standards based on the most efficient standalone combined cycle combustion turbine gas fired energy facility commercially demonstrated and operated in the US. He explained that by updating the offset rates and the efficiency expectation for gas plants, the Council is moving the ball forward in meeting the standards set by the Governor’s Executive Order 20-04.

He explained that RiverKeeper and the other commenters urge EFSC to reconsider the proposed approach to the question of what constitutes a significant increase in pollution. He stated that HB 2021 intended to prevent significant increases in carbon emissions from “polluting fracked-gas plants” which are already the largest emitters in Oregon. He explained that the proposed rules exempt an electric generating facility increasing its fuel consumption by no more than 10% from the requirement to obtain a site certificate amendment and that a 10% increase in fuel consumption should be considered significant considering the size of gas plants. He recommended that any increase in gas use is significant given the clear direction of Executive Order 20-04 to limit new emissions plus the requirements of HB 2021 to avoid additional emissions from new or existing gas plants.

Mr. Serres also explained that gas plants do more damage to the atmosphere than just what is caused by the emissions of the plant itself. He explained that 3 to 9 percent of a power plant’s gas demands could be released into the atmosphere through emissions from upstream pipelines, compressors, and wells in addition to the methane emissions from the gas plant.

Mr. Serres suggested that the Council should truly question whether fossil-fuel plants could truly be non-emitting given the unproven track record of carbon capture and sequestration technology over the long timelines that would be required for plants to durably remove or prevent carbon dioxide from entering the atmosphere.

- B. Protected Areas Rulemaking Hearing (Hearing¹⁴)** - Christopher Clark, EFSC Rules Coordinator presided over a rulemaking hearing to solicit public comments on the Council’s proposed amendments to the Protected Areas, Scenic Resources, and Recreation Standards and associated rules. Written comments must be received by 5:00 pm on July 21, 2022, to be considered.

Christopher Clark, acting as Presiding Officer opened the oral comment period at 6:11 pm

¹⁴ Audio/Video for Agenda Item B=00:43:41-2022-06-23-EFSC-Meeting-Audio

Angela Crowley-Koch, Oregon Solar plus Storage Industries Association (OSSIA): Ms.

Crowley- Koch noted that the world is in the middle of a climate crisis and explained many of its effects on Oregonians. She explained that these effects were the reason for Governor Brown’s Executive Order 20-04. Ms. Crowley-Koch explained that the Council had taken action to implement the executive order by approving a project “to better align standards and application requirements” with several objectives, including “to evaluate standards and application requirements to determine if the requirements should be adjusted for different types of energy facilities, including facilities which generate energy from renewable sources” and that through this action the department has recognized that renewable energy is important to meet the states’ climate change goals.

Ms. Crowley-Koch stated that OSSIA believes it makes sense to wait until the application process review is concluded before moving forward with the Protected Areas Rulemaking. She explained that she recognized that there are some dates in the current rules that are out of date and need to be addressed and suggested that if rulemaking cannot wait until the entire application process review is concluded that the Council should move forward only on that particular issue by changing or removing the date and making a date certain for when new protected areas would be included. She explained that OSSIA has worked with staff to improve this part of the rulemaking to be sure it would provide clarity and consistency for applicants.

Ms. Crowley-Koch explained that OSSIA has great concerns that the rest of the rules create uncertainty and make things not clear for applicants as they move through the application process. She explained that the application process is a long, complicated, and expensive process and that part of the Governor’s Executive Order is to reduce costs and delays. She explained that OSSIA believes that the rules create uncertainty and increase costs and delays, and as a result, requests that EFSC delay the protected areas rulemaking until the comprehensive review is completed.

Ms. Crowley-Koch raised the additional concern that the draft rules say there are no small business concerns, which they believe is “blatantly false.” She explained that OSSIA believes there are many small business concerns that were not fully investigated in the proposal of the draft rules. She explained that OSSIA members who have site certificates are small businesses because they have less than 50 employees. She explained in communication with the Department, staff had explained that they technically do not qualify as small businesses because they have subsidiaries for each particular project but objected to this analysis because it is the people that run the companies and the subsidiaries, unlike a situation if a large company like PacifiCorp were to create a smaller company. OSSIA is concerned that a formal review of the small business concerns was not completed prior to the rulemaking. She explained that while OSSIA appreciates the improvement to the rules over the past year, they ask to delay this rulemaking so EFSC can reduce the uncertainty, delays, and costs, and make sure the entire review is complete before rules are expanded through the EFSC process.

Brian Kelly, Greater Hells Canyon Council (GHCC): Mr. Kelly emphasized the need for the Council to take the rules for protected areas, scenic resources and recreation very seriously. He agreed that climate change is a huge concern and noted that he has seen the effects of climate change on wildlands in Eastern Oregon and has also seen negative effects from development and increases in population. Mr. Kelly explained that land that looks like an open space is habitat for various species of wildlife, and that GHCC is seeing impacts and challenges to wildlife due to degradation of their habitat. He explained that energy developments impact open spaces and the natural world and that GHCC wants the impacts to be minimized. He recommended that the rules for protected areas, scenic resources and recreational values can contribute to that goal.

Mr. Kelly explained that for around 10 years GHCC has conducted a volunteer project to remove invasive weeds from the Hells Canyon National Recreation Area in collaboration with the US Forest Service. He explained that the project is intended to benefit MacFarlane's Four o'clock, a federally listed threatened plant that grows in canyons. He noted that the weeds were introduced from the roads that were built to service the power line towers for lines coming out of the dams in the Canyons and were carried further by livestock using the roads. He explained that this was just one example of how energy development can degrade habitat.

Jake Stephens, NewSun Energy: Mr. Stephens stated that NewSun supports OSSIA's earlier comments in their entirety. Mr. Stephens explained that NewSun is also a small business under the definition and would be impacted by the proposed rules. He explained that the rules that EFSC adopts have high impact to NewSun in the terms of potential business standards, numbers, and investments. He explained that the EFSC process is burdensome and is essentially a million dollar process to do what counties accomplish for thousands or tens of thousands of dollars. He stated his position that the rules moving in the wrong direction creates additional challenges in terms of EFSC's efficiency.

He explained that Governor Brown's Executive Order 20-04 and HB 2021 have their own standards and policies regarding clean energy targets, the elimination of greenhouse gas emissions from the retail electricity sector, and maximizing the production of nonemitting electricity "in a manner that provides additional direct benefits to the communities in the state in the form of creating sustainable meaningful living wage jobs, promoting workforce equity, and increasing energy security and resiliency." He stated that EFSC is charged with implementing the policies of the state of Oregon and facilitating the success of the policies and recommended that rules considered by EFSC going forward need to be put in the context of HB 2021's requirements and evaluated on whether the rules facilitate the ability of the state to succeed in HB 2021's policies, requirements, and obligations.

Mr. Stephens recommended that the rulemaking be delayed, consistent with OSSIA's recommendation. He advised that the application process needs to be systematically evaluated as to whether it is facilitating HB 2021 by reviewing the rules and standards that apply or whether additional burdens are being imposed and to what benefits. He stated that Oregon is a beautiful state with a lot to protect and that NewSun is in the "ecosystem

collapse prevention business.” He explained that renewable energy developers are seeking to facilitate decarbonization and prevent entire ecosystems from collapsing. He explained that land use laws in Oregon limit the development of agricultural lands. He explained that habitat impacts are undeniable and unavoidable in achieving the objectives of HB 2021 but that there is “a bigger job at hand.” He recommended that while Oregon has a lot of well-developed standards, it needs to move in the direction of facilitating success in meeting the objectives of HB 2021 and include the overall benefit of renewable energy development in its decision making. He also encouraged ODOE staff to provide testimony and help bring other resources to legislative proceedings and LCDC rulemakings to support the ability of Counties and other jurisdictions to balance considerations related to renewable energy development in their own proceedings to ensure that projects get permitted and are able to move forward and be successfully invested in.

- C. **Wildfire Rulemaking Hearing (Hearing)**¹⁵ Christopher Clark, EFSC Rules Coordinator presided over a rulemaking hearing to solicit public comments on the Council’s proposed new energy facility siting standard for wildfire prevention and risk mitigation. Written comments must be received by 5:00 pm on July 21, 2022, to be considered.

Christopher Clark, acting as Presiding Officer opened the oral comment period at 6:37 pm

Jake Stephens, NewSun Energy: Mr. Stephens recommended that the contribution that solar facilities make to wildfire risk reduction by creating large firebreaks should be considered and credited in the application of the rules. He also recommended that large firebreaks be considered in the context of wildlife mitigation and under the EFSC permit applications as fire breaks and setbacks have the ability to prevent an entire ecosystem from burning down.

Jim Kreider: Mr. Kreider commented he had been listening to other comments but hasn’t heard dialog or exchange of ideas with Council as they are not asking questions. He explained that the public doesn’t know what the Council is thinking or what is important to them, making it impossible to do the rulemaking. He expressed his frustration with going to decisionmakers on important issues and there not being a lot of dialogue with the public. He further expressed his frustration with this particular rulemaking hearing and process.

All three **Rulemaking Hearings were closed at 6:47 pm by Presiding Officer Christopher Clark.**

Recessed: The meeting was recessed at 6:47 pm. by Chair Grail.

Call to order: The meeting was called back to order at 8:30 am on June 24, 2022 by Chair Grail.

¹⁵ Audio/Video for Agenda Item C=01:14:29-2022-06-23-EFSC-Meeting-Audio

Roll Call: Chair Marcy Grail, Vice-Chair Kent Howe, Council Members Hanley Jenkins, Cynthia Condon and Ann Beier were present in person and Council Member Perry Chocktoot was present virtually.

Oregon Department of Energy representatives present in person were Assistant Director for Siting/Council Secretary, Todd Cornett; Senior Policy Advisor, Sarah Esterson; Operations and Policy Analyst, Wally Adams; Siting Policy Analyst and EFSC Rules Coordinator, Christopher M. Clark; Senior Siting Analyst, Chase McVeigh Walker Senior Siting Analyst Kathleen Sloan and Administrative Specialist, Nancy Hatch. Oregon Department of Energy representatives present virtually were Senior Siting Analyst, Kellen Tardaewether. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC, was present virtually.

D. Consent Calendar (Action Item & Information Item)¹⁶ – Approval of May 26-27, 2022, minutes; Council Secretary Report; and other routine Council business.

Consideration of the May 26-27, 2022, Meeting Minutes - Review of the May 26-27, 2022 meeting minutes was deferred to the July 22, 2022 Council Meeting

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

Agenda modification - Agenda item H-2022 Carbon Dioxide Emissions Standard Rulemaking- Adoption of Permanent Rules has been removed from the agenda. It will be on the agenda for the July EFSC meeting.

Staff and Council Updates

Ann Beier - Welcome to our newest Council member Ann Beier. Ann was confirmed on June 10. This is her first meeting to attend though she attended the April and May meetings virtually. Ann lives in Bend. She was most recently the Community Development Director for Crook County.

Elizabeth Bobe - Liz began her position as Operations and Policy Analyst 2 on Tuesday. She has a bachelor's and master's degree in civil engineering from Iowa State University. Among other things, including owning a bakery, Liz has been an environmental health and safety manager where she maintained and drove environmental health and safety compliance for large scale ethanol production facility.

Department staff - The Department is still working to replace Chris Clark's position of Rulemaking Coordinator and we hope to have an update to Council soon.

Project Updates

¹⁶ Audio/Video for Agenda Item D=00:02:29-2022-06-24-EFSC-Meeting-Audio

Carty Generating Facility Amendment 3 - Amendment 3 seeks Council approval for a 3-year extension to both the construction commencement and the completion deadlines for the solar farm. The amendment would make the construction commencement deadline February 4, 2025, and the completion deadline February 4, 2028. Portland General Electric requested Type B review. On June 7, 2022, staff determined the amendment request was complete. On June 17, 2022 the Department: 1) determined the Type B review was justified; 2) issued the Draft Proposed Order recommending Council approve the request and 3) issued a public notice with a deadline for comments of July 12, 2022, at 5:00 pm. At the conclusion of the comment period, staff will evaluate any submitted comments and evaluate any changes that may need to be made to the Proposed Order. The Department anticipates Council review of the Proposed Order and possible final decision during the July EFSC meeting.

Boardman to Hemingway Project - Sarah Esterson is the lead on this contested case and provided an update. The B2H project has been in the contested case process for nearly 2 years, with 42 contested case issues that were granted, covering over 11 council standards. It has had over 25 limited parties that were granted standing. It is the most complex contested case in EFSC history due to the volume of participants issues and materials that were introduced during the contested case proceedings. Ms. Esterson expressed her gratitude to staff for immense effort put in to navigate the Department through this process. On June 21, 2022, Council received the proposed contested case order. Ms. Esterson and Ms. Tardaewether provided an overview of how to navigate through the 338-page document. June 30, 2022 is the deadline for limited parties to file exceptions to the order. July 15, 2022 is the deadline for responses to the filed exceptions. The requested exceptions and responses will be provided to Council as well as to Jesse Ratcliffe (Legal Counsel to Council on the Boardman to Hemingway contested case).

Council Member Jenkins asked what is being proposed regards to the proposed contested case being on the July EFSC meeting agenda.

Ms. Esterson forecasted without knowing the extent of the exceptions or the response to the exceptions, staff anticipates initiation of Council's review of the Proposed Order, focusing on standards that weren't implicated in the contested case. Subsequent meetings would include the review of the Proposed Contested Case Order and other standards.

Vice Chair Howe questioned with the July deadlines for filing exceptions, would there be an extension for the hearing officer to review those exceptions or are the exceptions for EFSC to review.

Ms. Esterson stated the exceptions are for EFSC and the parties to review.

Secretary Cornett provided additional detail in the process for the contested case phase. In July, Council will be provided the standards that were not part of the contested case and asked if they agree with those standards or if Council has any material changes. Regarding the next steps, it is impossible to determine time and meetings required for review until the Department has received the exceptions that are filed. The Department will reach out to Council for scheduling of future dates for the further review of B2H contested case issues. He suggested Council members begin reviewing the Proposed Contested Case Order, what the issues are and the conclusions the Hearing Officer has made. Council's specific questions regarding the proposed contested case should be presented to Jesse Ratcliffe as he is the legal Counsel for the B2H contested case.

Future Meetings

The July 2022 EFSC meeting will be a one-day meeting held on July 20, 2022, in Salem at the ODOE office. Secretary Cornett confirmed the Council would have a quorum for the meeting.

- E. Stateline Wind Project, Proposed Order on Request for Amendment 7 of the Site Certificate (Action Item)**¹⁷ Chase McVeigh-Walker, Senior Siting Analyst. Council reviewed the Proposed Order on Request for Amendment 7 (RFA7) of the Stateline Wind Project Site Certificate and adopted Proposed Order as the Final Order. RFA7 sought Council approval to amend a condition to allow a lower minimum aboveground blade-tip clearance and higher hub height for Vansycle II wind turbines, if repowered.

Council Member Jenkins motioned the Council adopt the Proposed Order as Final Order and issue the 7th amended site certificate for the Stateline Wind Project and include an addition of the word "condition" preceding "137" on page 7, line 39.

Vice Chair Howe seconded the motion.

The motion was passed unanimously.

- F. ORESA: Demo of Mapping and Reporting Tool (Information Item)**¹⁸ Wally Adams, ODOE Operations and Policy Analyst, and Kim Peacher, the Northwest Training Range Complex Community Planning Liaison Officer for the Northwest Department of Defense, presented a demonstration of the Oregon Renewable Energy Siting Assessment (ORESAs) Mapping and Reporting Tool.

Secretary Cornett offered clarification that the ORESA mapping tool doesn't need any special software. It is an online mapping tool which can be accessed through the Internet.

¹⁷ Audio/Video for Agenda Item E=00:29:04-2022-06-24-EFSC-Meeting-Audio

¹⁸ Audio/Video for Agenda Item F = 00:53:13-2022-06-24-EFSC-Meeting -Audio

Mr. Adams noted using a modern browser is recommended.

Secretary Cornett added the average person can access this information. If a person has GIS, shapefiles can be uploaded into the system and can be downloaded as well. Staff is discussing a video recording or handout of instructions for ease of access and navigation through the ORESA mapping tool as it is a great equalizer of information.

Council Member Condon questioned the correlation between protected areas on the mapping tool and EFSC considered protected areas.

Mr. Adams was unsure if there is a EFSC protected area layer specifically while assuring the layers that are in ORESA mapping tools for protected areas encompass areas that are in the Councils standard's. He will look further into the EFSC protected areas layer for the mapping tool.

Council Member Beier thanked the Department of Defense and Kim Peacher for their work on this project. She noted her involvement in being one of the "original guinea pigs" for this tool. She noted some guidance is needed for local governments and local GIS staff as they may not be aware such a powerful tool exists. She encouraged the public to play with this tool, you cannot break it.

- G. Public Comment Period (information Item)¹⁹** This time is reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

There were no public comments and the public comment period was closed at 9:55 am.

- H. 2022 Carbon Dioxide Emissions Standard Rulemaking- Adoption of Permanent Rules (Action Item)²⁰** Christopher Clark, EFSC Rules Coordinator presented a summary of public comments received on the Council's proposed rules implementing HB 2021 (2021) and updating the carbon dioxide emissions standards in OAR chapter 345, division 024 and staff's recommended responses. After considering public comments, the Council will consider the adoption of permanent rules.

This agenda item was moved to the July 2022 EFSC meeting.

- I. Annual Workplan (Information Item)²¹** Wally Adams, ODOE Operations and Policy Analyst, presented the Siting Division's 2022 – 2023 Annual Workplan.

¹⁹ Audio/Video for Agenda Item G= 01:21:16-2022-06-24-EFSC Meeting-Audio

²⁰ Audio/Video for Agenda Item H=00:00:00-2022-06-24-EFSC-Meeting-Audio

²¹ Audio/Video for Agenda Item I=01:26:15-2022-06-24-EFSC-Meeting-Audio

Secretary Cornett noted a message from Kaci Radcliffe, the project manager for the ORSEA project, reminding that there is an automated report to help people navigate the mapping tool. EFSC can build on that report if necessary to ensure that this tool is as easy as possible for the average person.

Council Member Condon inquired, with respect to compliance and incident response, is there a timeframe for response when an incident report or complaint is received?

Mr. Adams acknowledged there are requirements in EFSC process for the how and when of reporting incidents. Resolution of an incident or complaint is not noted with a timeline. The Department currently tracks and reviews incidents in the weekly scrum meetings, any issues will be resolved in a timely manner.

Council Member Condon questioned the Future Work Task for developing a “How Council Evaluates an Application” document and how staff would utilize as the council members change and may look for different information in decision-making. She expressed her concern that a document for such would need to be kept current or it could be problematic.

Mr. Adams acknowledged the question as one of the challenges in developing the document. From a developer’s standpoint, EFSC should provide some basic “guard rails” of consistency for how applications are developed or evaluated. There may be areas where staff cannot give guidance. This document would be more of what information needs to be provided for the Council to do their evaluation.

Secretary Cornett added the Department sees some patterns of consistent issues with applications being incomplete. If better guidance is provided, applications may get to the completeness phase faster. He further noted that staff will not provide legal advice or any indication of approval. Completeness does not indicate approval, simply that there is enough information provided to evaluate the application. The value of the document would be to resolve the consistent patterns of incomplete applications.

Chair Grail agreeing with Council Member Condon’s comments and concerns, suggested renaming the document to alleviate confusion.

Council Member Beier requested an outline of the scope of the program assessment. Mr. Adams noted it is available from a prior meeting and he will provide it for Ms. Beier’s review.

Secretary Cornett noted this is a future workplan for the Department. He encouraged Council to share their thoughts and ideas on plans such as process improvement, activities, applications, amendments, how the department works with reviewing agencies or with the Council, or any other suggestions.

- J. Echo Solar Project – Appointment of Special Advisory Group (Action Item)**²² Christopher Clark, ODOE Senior Siting Analyst recommended that the Council appoint the Morrow County Board of Commissioners as the special advisory group under ORS 469.480(1) for EFSC proceedings related to the proposed Echo Solar Project.

Mr. Clark noted the department received the Notice of Intent on May 10, 2022. There is public information meeting regarding the Echo Solar Project on July 27, 2022, in Boardman Oregon. Council is invited to attend either in person or virtually. Secretary Cornett added the meeting will also be recorded and posted on the project site.

Vice Chair Howe motioned the Council appoint the Morrow County Board of Commissioners as a special advisory groups or council proceeding related to the proposed Echo Solar Project.

Council Member Condon seconded the motion.

The motion carried unanimously.

Recessed: The meeting was recessed until 12:30 pm by Chair Grail.

- K. Nolin Hills Wind Power Project, Continuation of Public Hearing on Draft Proposed Order on Application for Site Certificate (Hearing)**²³ Kate Triana, Senior Administrative Law Judge at the Oregon Office of Administrative Hearings, facilitated the continuation of the Draft Proposed Order (DPO) public hearing for the applicant to respond to issues raised on the record of the DPO, from April 19 through May 26, 2022.

ALJ Triana requested to speak to a representative for Blue Mountain Alliance, specifically Daniel Kerns, in reference to a comment letter received. Mr. Richard Jolly, a member of the board, represented Blue Mountain Alliance and responded. Mr. Kerns was not in attendance but had sent a letter for ALJ Triana’s consideration regarding a request for a motion to allow late comments from Blue Mountain Alliance to be included on the record. Mr. Jolly noted Blue Mountain Alliance was unaware of the siting project and of the comment period deadline. Patrick Rowe, Legal Counsel to the Council, provided information regarding the procedural steps that would need to be taken if the motion was granted. Council discussed the parameters involved in allowing extension of the public comment deadline for “good cause”. Council members agreed there had been adequate time in the public comment timeframe to allow for public comments and additionally the Council met in Pendleton for the public hearing.

²² Audio/Video for Agenda Item J=01:55:17-2022-06-24-EFSC-Meeting-Audio

²³ Audio/Video for Agenda Item K=02:06:17-2022-06-24-EFSC-Meeting-Audio

ALJ Triana denied the request to allow the comments from Blue Mountain Alliance.

Mr. Matt Martin, Capitol Power - On June 15, 2022, Capitol Power provided supplemental response to issues raised on the received comments. Mr. Martin summarized their submitted responses to comments and questions received and why they believe there are compelling reasons for Council to grant the request for the Goal 3 Exception. He first clarified the proposed project of 8,840 acres is 6.6% of the landowner's agricultural land which applicants and landowner do not feel is substantial. The particular parcel started as a wind farm project, later being expanded to include solar and battery storage in an effort to produce power around the clock, which is how Oregon will ultimately meet its renewable energy goals. Another reason this site was chosen is there is no irrigation available. The land is no longer viable and has been utilized as dry land. The site is also located next to power lines and roads and near the town of Nolin. This is the best site for the project and is also some of the worst lands that the landowners own.

ALJ Triana confirmed the information provided in Mr. Martin's testimony has also been presented (in written form) in the application.

Mr. Martin noted that was correct adding the landowner's declarations provide additional context regarding their farming operations. The applicant has summarized Exhibit K of the application and added it to the supplemental response submitted to Council.

ALJ Triana inquired if Mr. McMahan, Counsel to the applicant, was presenting new information or summarize previously submitted information.

Mr. McMahan noted while he was not providing new information, the supplemental response "adds color" to the evidence and information previously submitted. It includes testimonial evidence from the landowner's representatives, who were present and willing to answer questions. Mr. McMahan, referring to the May EFSC meeting, stated the applicants understood Council suggestion that applicants need to work harder to justify the Goal 3 Exception. Applicants have provided robust supplemental responses to comments and believe they have provided ample evidence to meet the exception. They have submitted Exhibit K to provide greater clarity in an effort to ensure Council understands the applicant's analysis of the reasons they feel they meet the Goal 3 Exception.

Mr. McMahan stated it is essential for applicants to engage with the landowner as they are the people who work and know the land. The 5th generation landowners in this case have been involved in the entire process as the stewards of the land. The landowners identified the best location based on their knowledge. The site chosen is considered the least production agricultural property in their land holdings. The project provides an opportunity to make economical use of land where farming is not a viable opportunity.

Mr. McMahan added the industry is in its infancy. Council is evolving with how to deal solar energy siting while applicants are trying to navigate the regulatory standards. It is important that there be clear precedent on how the Goal 3 standards and goals can be met and how it relates to other state policies particularly relating to climate change. The landowner's testimonies include how they believe the site can make beneficial and important use of the land to deal with climate change goals.

Regarding the 2-mile setback, Mr. McMahan added Capitol Power is working with the county to avoid locations that would be subject to the 2-mile setback. The intention of Nolin Hills and Capitol Power is to resolve the issue to the county's satisfaction. Rather than hold up the process and if successful in the process, Nolin Hills would request the 2-mile setback be removed as they would be in compliance with county standards.

Mr. Martin acknowledged Mr. Jolly's earlier comments adding Capitol Power plans to own and operate this facility for the long term. They want to be good members of Umatilla County and live within their standards. Capitol Power takes community engagement seriously. 100 of the 112 wind turbines for this facility are outside of the 2-mile setback. Capitol Power understands allowances for landowners and local residents to waive the setbacks, but this issue is not resolved currently.

Council Member Jenkins surmised the applicant was not asking Council to remove the 12 turbines (that would be inside the 2-mile setback) from consideration. Council needs to address them as if they are there in relation to the 2-mile setback.

Mr. McMahan confirmed Council Member Jenkins' statement.

Council Member Jenkins questioned one of the maps included in the Exhibit K provided to Council. The map includes areas enrolled in the Conservation Reserve Programs. From his interpretation of the map, the site does not appear to be in the CRP program. Has it been recently enrolled?

Mr. McMahan confirmed that the site has been enrolled in CRP.

Council Member Condon referred to applicant's comment from the May EFSC meeting, some of the unique factors of this project is the solar, wind and battery storage, and its location is proximate to transmission lines and a proposed BPA substation. This proposed project is talked about in phases. Will each phase include the 3 unique elements of solar, wind, and battery storage? She also posed the question what if BPA does not develop the proposed substation?

Mr. Martin replied the proposed interconnection to BPA and substation are to be located north of the Umatilla River for access reasons. If the substation does not get built, the alternative connection is either a smaller project to the existing BPA line one mile to the North or the UAC transmission option. If Capitol Power cannot sell 600 megawatts at once, they will build in phases. Not all elements are

guaranteed to be built simultaneously. In phases, the products with the most demand will take priority as will the requirement to create a 100% renewable grid.

Council Member Condon asked is there a chance that a commercially viable solution is only solar on this site?

Mr. Martin replied it would be difficult economically to build a long transmission line without a bigger project. If the solar site is first built, it would likely be solar and battery storage. Mr. Martin reminded the project started as a wind farm and has evolved to this project.

Mr. Martin noted Council had comments from the May meeting regarding Capitol Power's standing behind Nolin Hills, he inquired if Council had received an adequate response to the question.

Council Member Condon replied that a response was not included in the material provided. She stated her belief and concern that there has not been sufficient evidence on the organizational expertise standard for the application. Nolin Hills is not Capitol Power. While there may be evidence that can be provided, it is not in the materials provided.

Mr. Martin requested to submit a letter from the general counsel on behalf of Capitol Power which acknowledges that Capitol Power will stand behind the Nolin Hill Facility and how Capitol Power will bring its organizational expertise "to the table" and stand behind this project.

The public hearing for the Nolin Hills Wind Project was closed at 1:32 pm.

- L. Nolin Hills Wind Power Project, Council Review of Draft Proposed Order on ASC (Information Item)²⁴** – Sarah Esterson, Senior Policy Advisor, Kathleen Sloan and Kellen Tardaewether, Senior Siting Analysts, presented the Draft Proposed Order on the ASC for a proposed 600-megawatt (MW) wind and solar facility to be located in Morrow County and issues raised on the record of the DPO, for Council review. Council had the opportunity to provide comments to the Department for consideration in the Proposed Order.

Council Member Condon thanked Capitol Power for providing the letter regarding its organizational expertise and financial backing of Nolin Hills. She expressed her concern with the phrase "to ensure that the project is built to the appropriate standards". She would be more comfortable if it read "designed, built, and operated..." She also questioned whether the phrase "stands behind", as used in the letter, can be interpreted as a guarantee or warranty.

²⁴ Audio/Video for Agenda Item L=03:12:07-2022-06-24-EFSC-Meeting-Audio

Council Member Jenkins asked if Council Member Condon would suggest Council make the guarantee a condition of the application.

Council Member Condon expressed her belief that the application and review relied on Capitol Power to take the (guarantor) position and would recommend it being a condition.

Council Member Jenkins confirmed his support for the condition. All of the Council expressed their support for the condition. Staff confirmed the information required by Council and that they would compose a draft language change to the condition and return later in the presentation for Council to review.

Secretary Cornett commented Council bringing up a question or idea is appreciated by staff. It is important for Council to include as much clarification and direction as to what language best represents their interests. Staff is taking findings and conditions from the DPO and making changes based on Council's comments.

Council Member Jenkins questioned Secretary Cornett whether procedurally staff envisioned sending out draft language and having Council review and respond.

Secretary Cornett suggested the new draft language be sent to Council Member Condon for her review to ensure that staff is adequately addressing her comments.

Council Member Beier asked Council Member Condon if the language "stands by" needs to be spelled out more.

Council Member Condon agreed, adding it might be best to use guarantee or warranty. She further commented in the articles of Incorporation for Nolin Hills, there is a specific provision for third parties. EFSC is relying on Nolin Hills not the parent LLC (Element Power and two different forms of Capitol Power). If the liability is limited to the project specific LLC, but EFSC is relying on the parent LLC, that should be guaranteed by the parent company in writing.

Council Member Condon noted the various ways of reference for Capitol Power (DBA, Nolin Hills, Capitol Power Independent) in the document. She asked is the DBA for Nolin Hills accurate? Or are they independent? EFSC wants to be sure which entity they are relying on for the organizational structure.

Council Member Jenkins questioned the need to include the non-seismic analysis in the Geotech investigation regarding the structural standards condition for ensuring the site is seismically sound.

Ms. Sloan stated that it would be covered, but adding the non-seismic analysis would clarify that both were covered.

Council Member Jenkins advised that Council had received additional comments earlier on the record concerning the 2-mile setback from Umatilla County. However, Council should recognize their land use evaluation needs to be of the applicable substantive criteria that are required by statewide planning goals and he feels the Council's position should be consistent with the staff recommendation that the 2-mile setback is not required by statewide planning goals and is therefore not applicable substantive criteria.

Ms. Esterson noted a provision and rule that allows the Department to consult with reviewing agencies prior to issuance of the Proposed Order. Staff intends to coordinate and share their analysis with Umatilla County.

Vice-Chair Howe understood the applicable substantive criteria to be land use criteria adopted by local governments.

Secretary Cornett explained the Department's understanding of what constitutes applicable substantive criteria. As indicated in statute, only local land use criteria that is clearly "required" by Statewide Planning Goals constitutes applicable substantive criteria. And since nothing in the Statewide Planning Goals requires a 2-mile setback between wind turbines and residences, that Umatilla County standard is not required. Umatilla County however takes a broader position and states that because the 2-mile setback is consistent with Statewide Planning Goals, it must be included as applicable substantive criteria.

Council Member Jenkins provided his position on the Goal 3 Exception request. The primary motivation for Oregon's Land Use Program was protection of farm and forest lands forever. Goal 3 states (in part) agricultural lands shall be preserved and maintained for farm use consistent with existing and future needs for agricultural products, forests and open space. He noted his involvement in the Land Conservation and Development Commission, and the development of the Solar Rules. The rules require an exception be taken when 12 acres of high value or 20 acres of other agricultural land are taken out of the agricultural production by a solar facility, which this application exceeds. EFSC statute has 3 requirements which must be met to justify the Goal 3 exception.

- a) Reasons justify why the state policy should not apply*
- b) Significant (EESA) consequences anticipated from the proposed facility have been identified and adverse impacts will be mitigated.*
- c) The facility will be (or will be made) compatible with other adjacent uses.*

The land presented for the exception is designated as arable land with scattered inclusion of high value land. This acreage has been cropped in the past and is in the county's exclusive farm use zone. While he agrees and accepts many of the reasons for justifying the removal of this acreage from the statewide planning goals, he also believes many of the same reasons could apply to any dry land wheat acreage in the region. There needs to be a demonstration of why this specific site should no longer be protected and how the applicable criteria are met. The

Oregon Supreme Court found in Save our Rural Oregon versus EFSC that a gas-powered electric generating facility was particularly suited to its sight due to its proximity to an existing natural gas pipeline, a transmission line and substation. Council Member Jenkins believes this site is particularly suited because it is proposed to be developed in conjunction with the wind facility and all of its supporting facilities. The applicants have emphasized the benefits of being cited near the BPA transmission line and the proposed BPA substation to be constructed with the wind facility, and that the solar facility will balance the electric loads with wind facility in the evening and the solar facility during the day and will increase reliability to the grid. In addition, the applicants state that all of the acres under the management of Cunningham farms, this parcel can best integrate wind and solar generation.

Council Member Jenkins expressed his support for the site certificate to be conditioned with the Goal 3 Exception that the solar facility site is developed in conjunction with the wind facility to take advantage of the shared supporting facilities, transmission, substation, roads and battery storage. He further noted his belief that the solar facility is particularly suited for the proposed sight with its association with the wind facility and its shared supporting facilities, therefore must be developed with the commercially viable wind facility.

Vice Chair Howe stated his position that the Goal 3 Exception is justified. He noted the location of the solar facility takes advantage of the relatively flat area with excellent aspects towards the sun, the availability of the wind facility infrastructure and will have a lack of impacts to the existing agricultural operations. The inclusion of solar creates a balanced generation profile, increasing the reliability of the grid and increases the projects viability. The solar site is particularly suited due to its close proximity to a proposed wind energy facility and provides interconnection opportunity for the solar facility without requiring additional transmission lines. He expressed his support for the Goal 3 Exception approval with the condition that the solar facility be built in conjunction with the wind facility.

Council Member Beier confirmed her agreement with Vice Chair Howe and Council Member Jenkins' findings. She urged staff to ensure that the findings reflect the discussion of the locational dependent factors that distinguish this project, as the locational factor is critical to the application.

All of the Council members voiced their approval of Vice Chair Howe and Council Member Jenkins statements and the language of the condition for the Goal 3 exception.

Regarding the retirement and final assurance in the application, Council Member Beier noted projects are becoming more complex. She encouraged staff to continue working with consultants to confirm the actual project management costs to ensure the contingencies, which have been in place since 2005, are applied consistently.

Council Member Condon confirmed her understanding of the long-time practice of using the contingencies. She requested that letters of credit be adjusted annually if the contingencies are found to be too high or too low.

Ms. Esterson stated the current standard condition for evaluating the bond/ letter of credit over time is for inflation. The conditions allow for a reduction based on the final number of components, not changing methods. She acknowledged Council request to have a reevaluation on a regular basis. She noted in the Umatilla County's Development Code, the conditional use criteria for decommissioning a wind facility establishes that a decommissioning estimate must be evaluated every 3 years. It is intended to be for the methods of decommissioning and the cost estimate per task and action, not the project management fees. Staff can include an ongoing evaluation for the whole decommissioning, which would be an ODOE reevaluation.

Council Member Condon referred to the applicant's statement that this is a new world for everyone. No one knows what the next 23-30 years will look like. It is important to continue to look at different options. She noted her support for keeping the contingencies that have been in the past and staff's proposed contingencies.

Council Member Condon expressed her concern regarding the security instrument and Capitol Powers letter confirming its commitment to providing the financial assurance for the site. The security provided recognizes Nolin Hills as the project entity not Capitol Power.

Secretary Cornett asked for confirmation from the Council regarding approval for the current contingency as proposed in the DPO or should staff have a consultant evaluate?

Council Member Jenkins stated if there is an interest in changing the contingencies, EFSC needs to talk about a different process. Council should stick with the contingencies currently in the DPO.

Secretary Cornett confirmed Council's plan to approve the contingencies as is and staff does not need to have a consultant evaluate. He further questioned Council on the financial assurance and bond amount for decommissioning reevaluation. After discussion, Council confirmed its approval of the reevaluation of decommissioning estimate every 3 years included in the Umatilla County Development Code for the Nolin Hills Project. Staff and Council will examine decommissioning guidelines for future facilities.

In reference to the Historic, Cultural and Archaeological Resources Condition, Council Member Chocktoot questioned whether Staff had consulted with the Confederated Tribes of Umatilla Indian Reservation (CTUIR) for guidance.

Ms. Sloan confirmed the CTUIR has participated in the field of inventory and identification as well as the archaeological survey work. They have also entered into a confidential mitigation agreement with the applicant for this facility.

Ms. Esterson presented 2 new draft conditions based on the organizational expertise and the goal exception as a starting point for Council's review.

Council Member Condon requested more clarification be noted in the condition that Nolin Hills has access to the expertise and resources represented by Capitol Power to design, build and operate the facility.

Council discussed different language to be used in the condition expressing some concern for the language “balanced generation portfolio” and “commercial viability”.

Secretary Cornett thanked Council for the feedback and input, reminding this is only a starting point for the language for the two conditions. Staff will present the final version to Council when completed. Staff will work with Council’s Counsel Patrick Rowe on specific language in the condition.

The June 22-23, 2022, meeting was adjourned at 4:21 p.m.