

Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Port Of Morrow
Riverfront Center
Riverfront Room
2 Marine Dr. NE
Boardman Or

May 30-31, 2024



Thursday, May 30, 2024

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 (Information Item)

Boardman to Hemingway Transmission Line Public Hearing on Draft Proposed Order for Request for Amendment 2 of Site Certificate

**Informational Presentation – Kellen Tardaewether, Senior Siting Analyst
Oregon Department of Energy**

May 30, 2024

B2H RFA2: Public Hearing on Draft Proposed Order Overview

1. Facility Overview: Department overview of the siting process, approved facility components and location, the amendment request, and Draft Proposed Order.
2. Public Hearing Overview: Presiding Officer will explain the legal requirements for providing comments on the record and will facilitate the hearing.
3. Public Hearing:
 - a. The certificate holder will be provided an opportunity to provide/present on anything in the DPO and/or may submit additional information/evidence to supplement the record.
 - b. Members of the public will be provided an opportunity to comment on the DPO and/or RFA2.
 - c. Council will be provided an opportunity to make comments about any concerns they have related to the DPO and/or RFA2.
 - d. The certificate holder will be provided an opportunity to respond to any comments prior to the close of the public hearing tonight and until June 3, 2024 at 5:00 p.m. They may also request to extend or change the June 3, 2024 date to leave the record open to respond to comments.

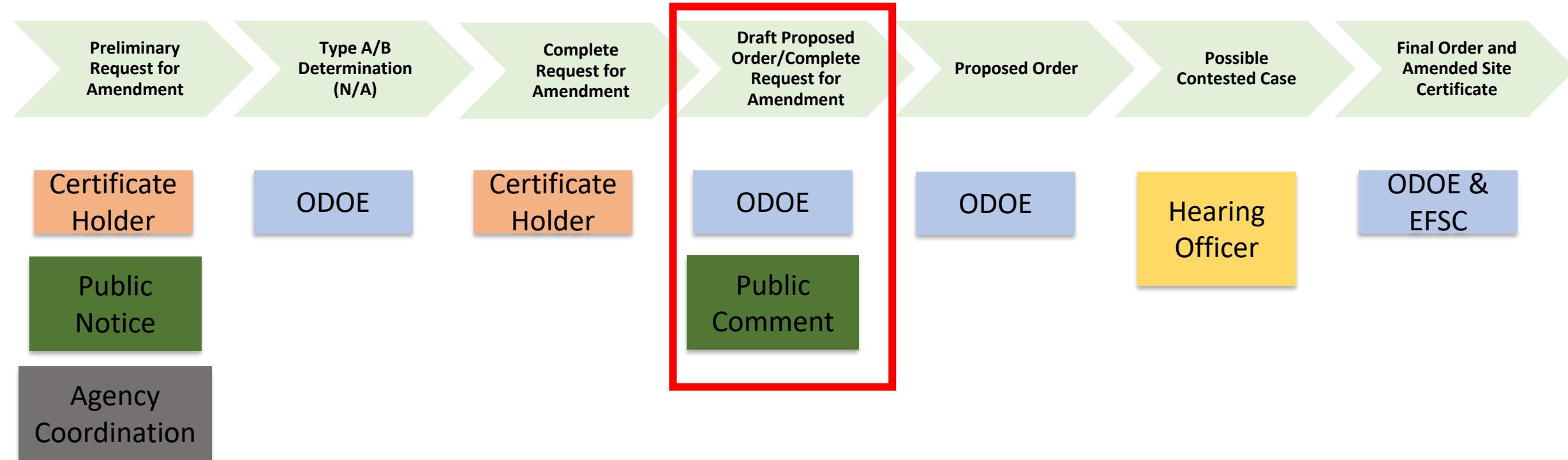
Energy Facility Siting Council (EFSC) Review



- Consolidated review and oversight of most large-scale energy facilities and infrastructure in Oregon
- 7 Members of EFSC
 - Governor appointed, Senate confirmed – Volunteers from around the State
- ODOE's Siting Division is staff to EFSC



Energy Facility Siting Amendment Process



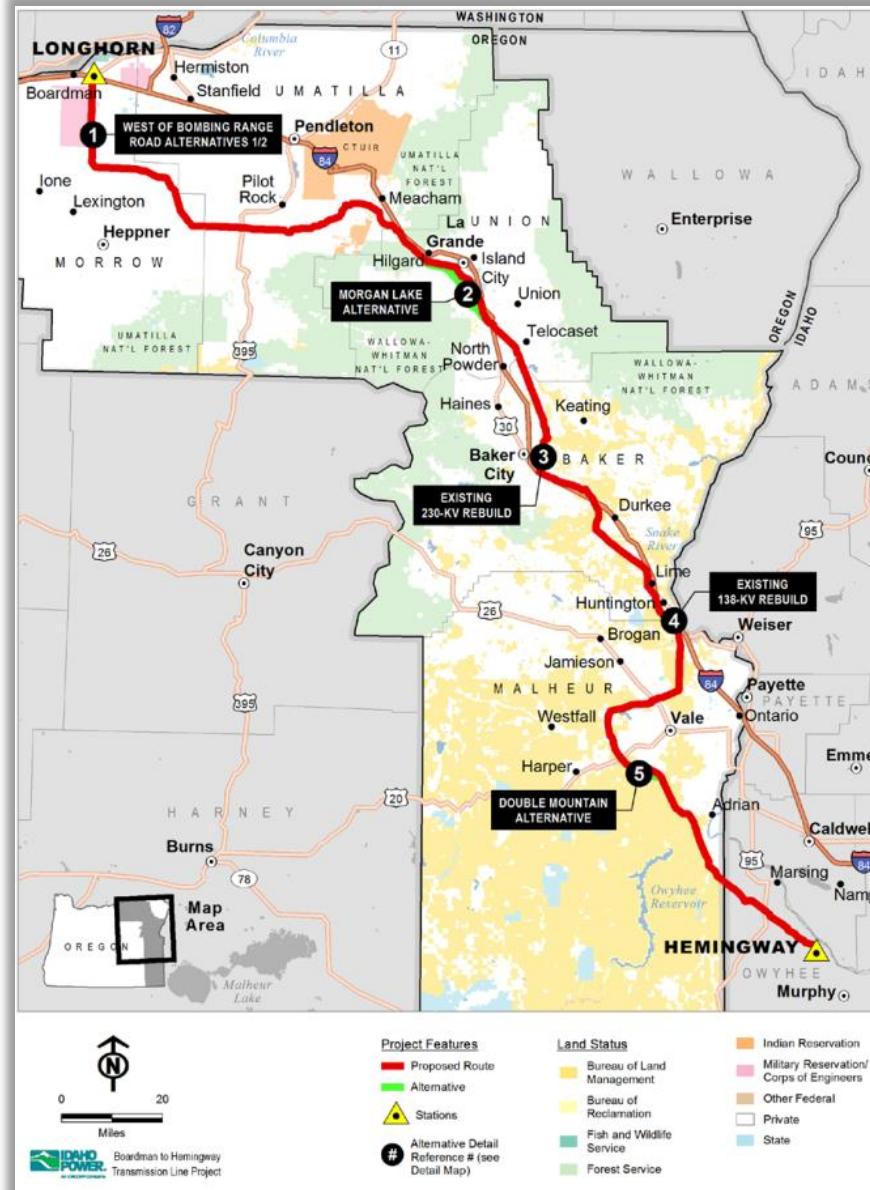
B2H RFA2: Approved Facility Overview

Certificate Holder
Idaho Power Company

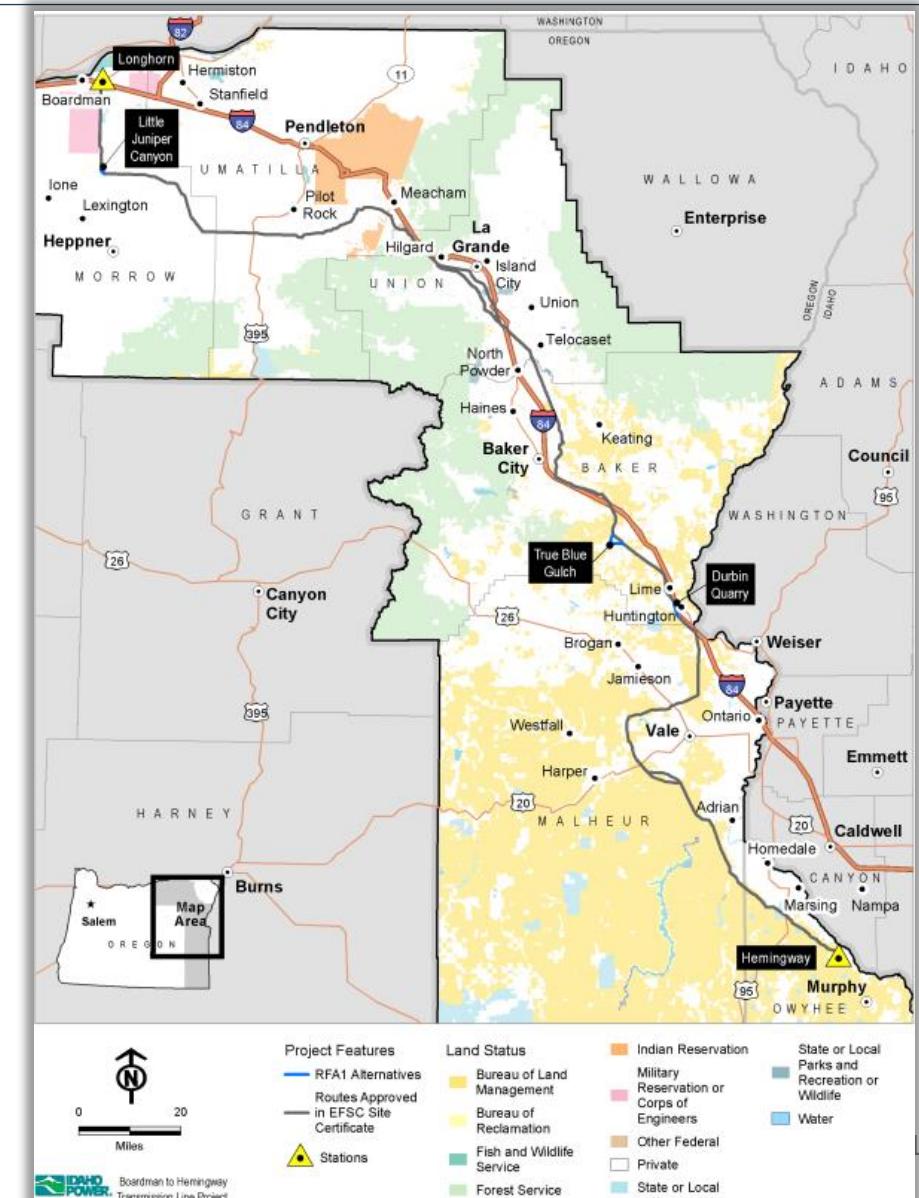
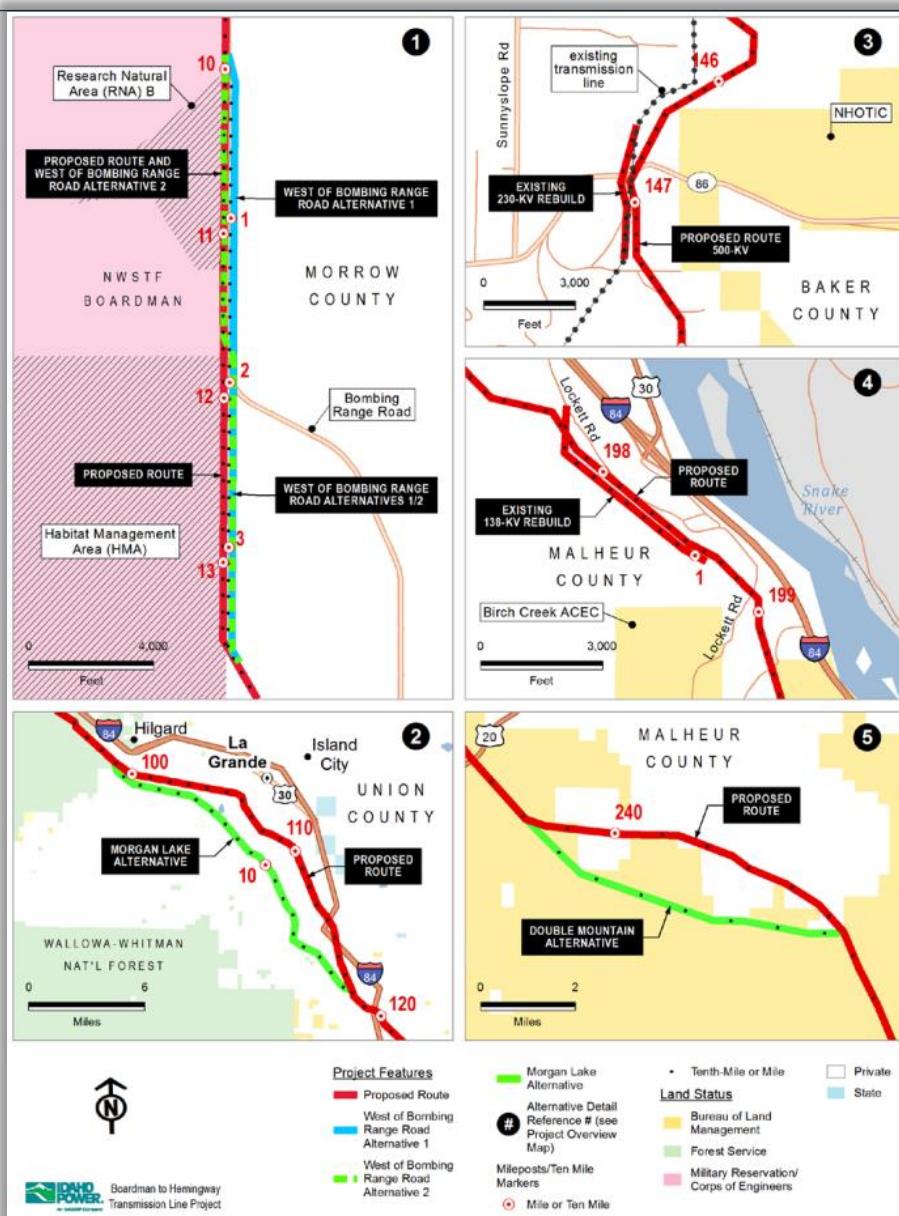
Approved Facility

Approximately 273 miles of predominantly 550 kV transmission line, includes 8 alternative routes (ASC and RFA1) and related or supporting facilities

Facility Location:
Morrow, Umatilla, Union, Baker and Malheur Counties



B2H RFA2: Approved Facility Overview



OREGON
DEPARTMENT OF
ENERGY

IDAHO POWER
Boardman to Hemingway
Transmission Line Project

B2H RFA2: Amendment Request

Request for Amendment 2 (RFA2) seeks approval from EFSC for the following changes (a short summary of each provided in next slides):

1. Redefine the site boundary and micrositing areas;
2. Add micrositing area transmission line and work area alternatives;
3. Construct and operate a Midline Capacitor Station in Union County;
4. Increase the width of some temporary construction roads;
5. Amend language of site certificate condition(s).

B2H RFA2

Scope of Council's Review – OAR 345-027-0375

- 1. That the portion of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards applicable to an original site certificate application;*
- 2. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate; and;*
- 3. The facility, with proposed RFA2 changes, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed RFA2 changes.*

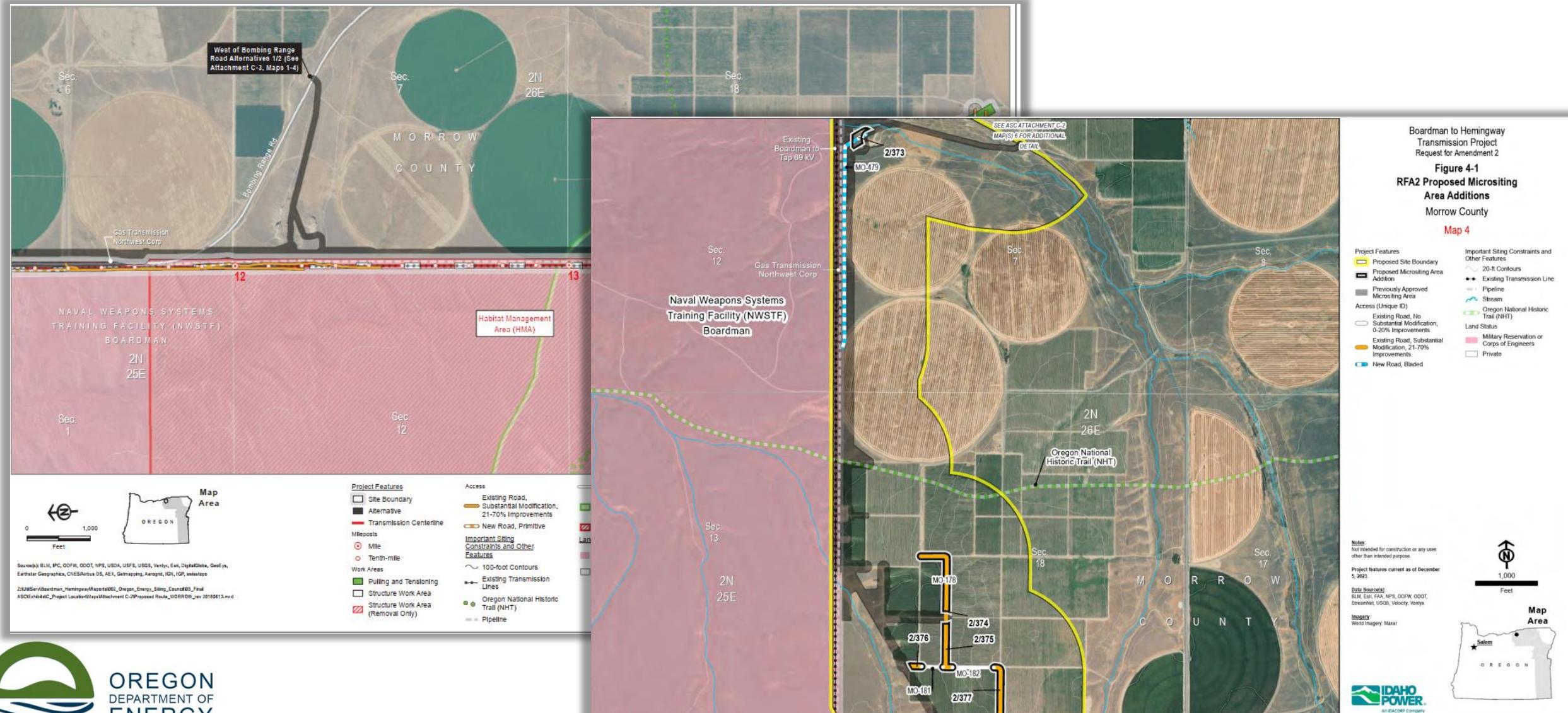
B2H RFA2 and DPO

- 1. RFA2 includes the certificate holder request for Council approval to separate the application of the definitions of site boundary and micrositing area (OAR 345-001-0010(31) and OAR 345-001-0010(21), respectively):**

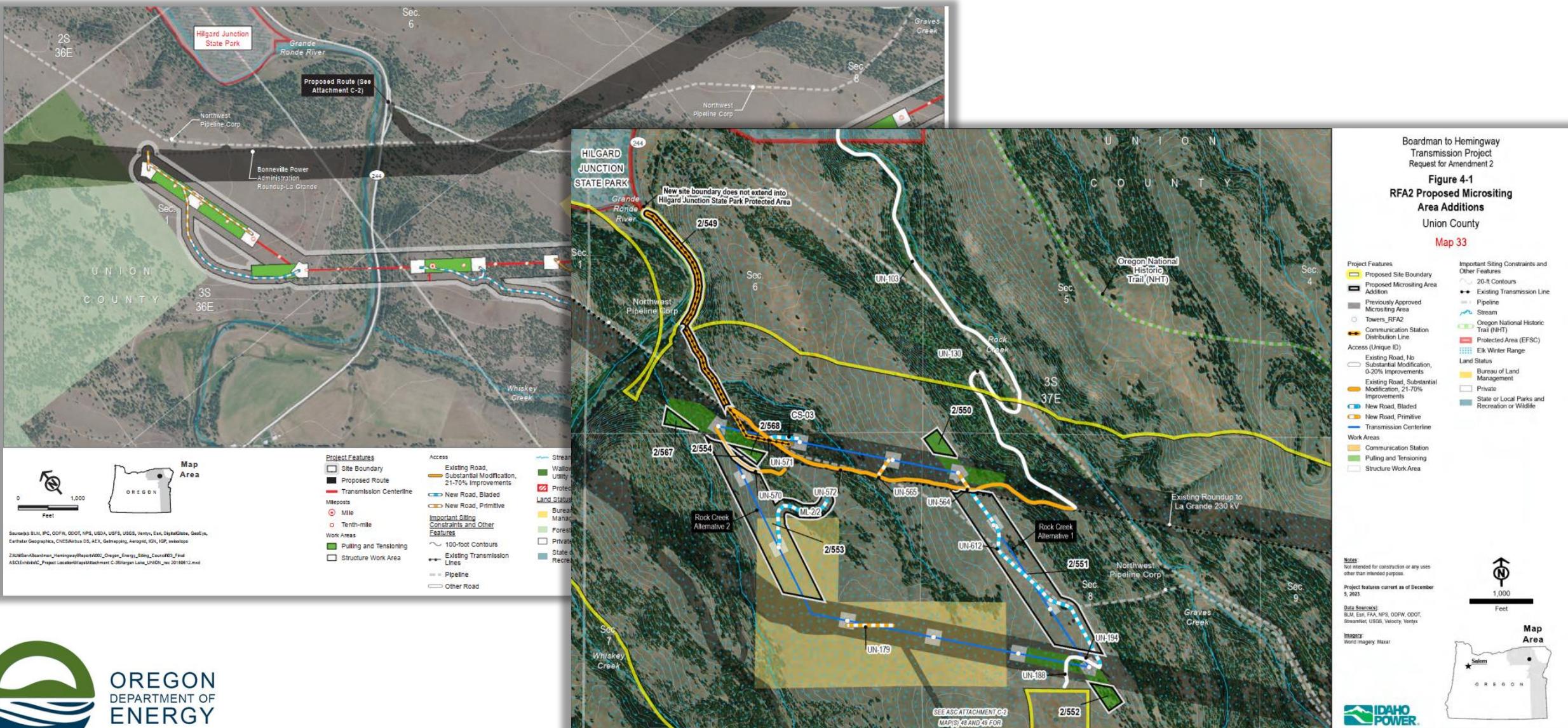
Discussed in DPO Section II.B.1 (page 17) and in Section III.A.1, General Standard of Review (page 47):

- Final Order on ASC and RFA1, Council approved the facility where the site boundary was equivalent to a micrositing transmission line corridor or micrositing area;
- Expanded site boundary for transmission line routes would be 0.5 mile (2,640 feet) wide, with a micrositing corridor/area of 500 feet (same width as the previously approved site boundary/micrositing area). Proposed expanded site boundary not in all areas.
- Micrositing corridor means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.
- Council permits final siting flexibility within a micrositing corridor when a certificate holder demonstrates that requirements of all applicable standards have been satisfied by adequately evaluating the entire corridor and location of facility components anywhere within the micrositing area or corridor. The Council does not have an associated Council standard or statute to evaluate this request against.

B2H RFA2 and DPO



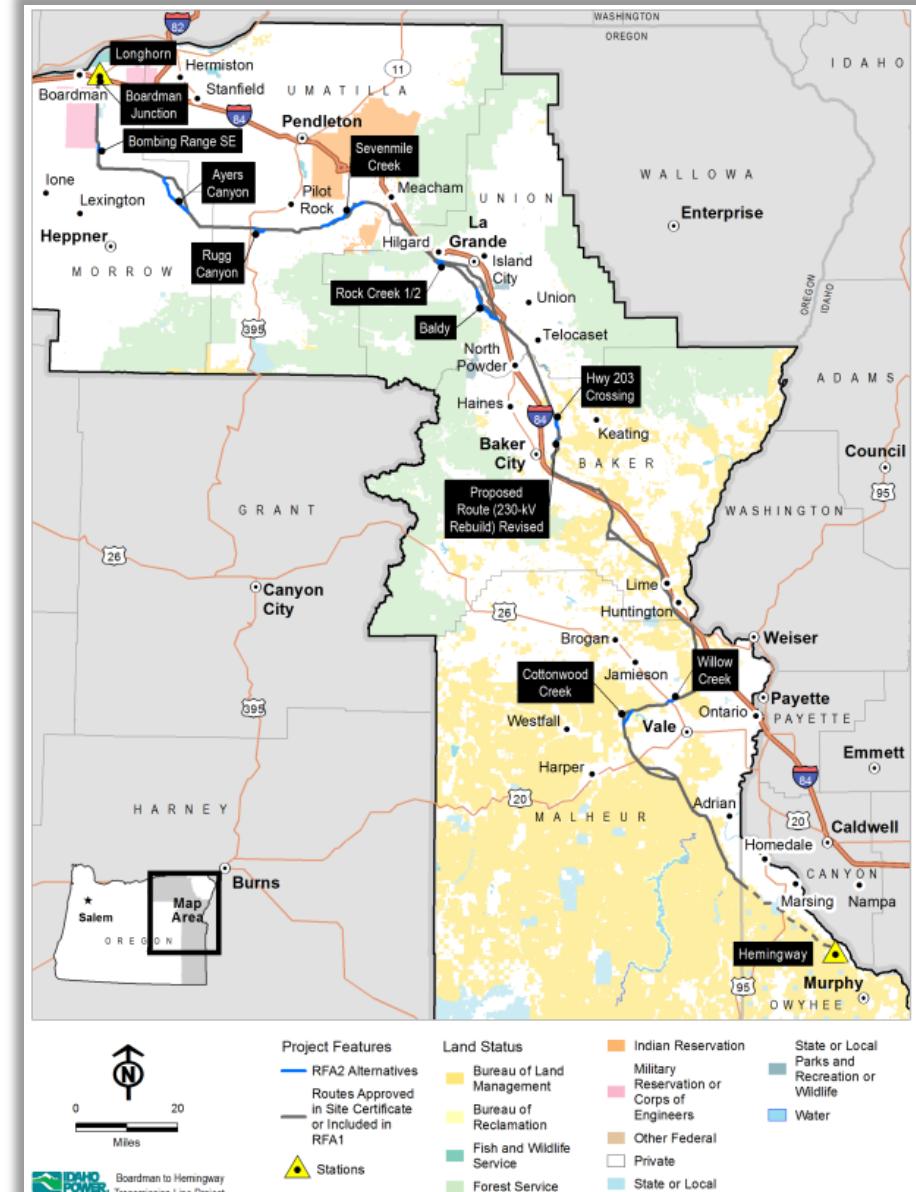
B2H: RFA2 and DPO



B2H RFA2 and DPO

2. Add micrositing area alternatives to:

- Relocate the transmission line in 12 locations based on certificate holder coordination and agreement with the affected landowners. This includes approximately 40 miles of 500-kV transmission line alternatives with two communication alternatives and 98.5 miles of associated access road modifications, and 0.6 mile of 230-kV transmission line alternatives;
- Refine 58 miles of roads outside the proposed RFA2 transmission line alternatives resulting from additional design and engineering review;
- Add temporary work area alternatives including:
 - 5 light-duty fly yards;
 - 13 multi-use areas (MUAs) ; and
 - 115 pulling and tensioning sites.



B2H RFA2 and DPO

2. Add micrositing area alternatives:

Table 2: RFA2 Proposed Transmission Line Route, Access Road, and Work Area Additions

Proposed Micrositing Area Additions ¹	Length of Addition – Transmission Line (miles)	Length of Addition – Access Road (miles)	Work Areas (acres)	Micrositing Area (acres)	Description of Micrositing Area Addition
Morrow County					
Boardman Junction alternative ²	0.6	--	3.9	5.1	Slight design modification to west to span I-84
Bombing Range SE alternative ³	1.0	0.4	0.8	5.7	Slight design modification to east to avoid impacts to pivot irrigation
West of Bombing Range Road Alternative 1 (ASC Approved Alternative)	--	--	1.8	--	Pulling-tensioning site adjustments
Ayers Canyon alternative ⁴	8.7	24.2	63.6	893.9	Alignment shifted to southeast per landowner request
Other Access Road and Work Area Changes for ASC Approved Route	--	1.7	34.6	19.8	Road and pulling-tensioning site adjustments
Morrow County – Total	10.3	25.4	75.4	924.5	
Umatilla County					
Rugg Canyon alternative ⁵	2.5	2.6	21.5	159.0	Alignment shifted to southern parcel boundary per landowner request
Sevenmile Creek alternative ⁶	9.9	4.3	74.9	695.1	Alignment shifted northwest to adjacent ridge per landowner request
Other Access Road and Work Area Changes	--	8.6	67.6	241.4	Road, pulling-tensioning site, and MUA adjustments
Umatilla County – Total	12.4	15.5	164.0	1,095.5	
Union County					
Rock Creek 1 alternative ⁷	1.4	2.1	10.8	49.3	Revised transition to Morgan Lake alternative to avoid isolated BLM parcel

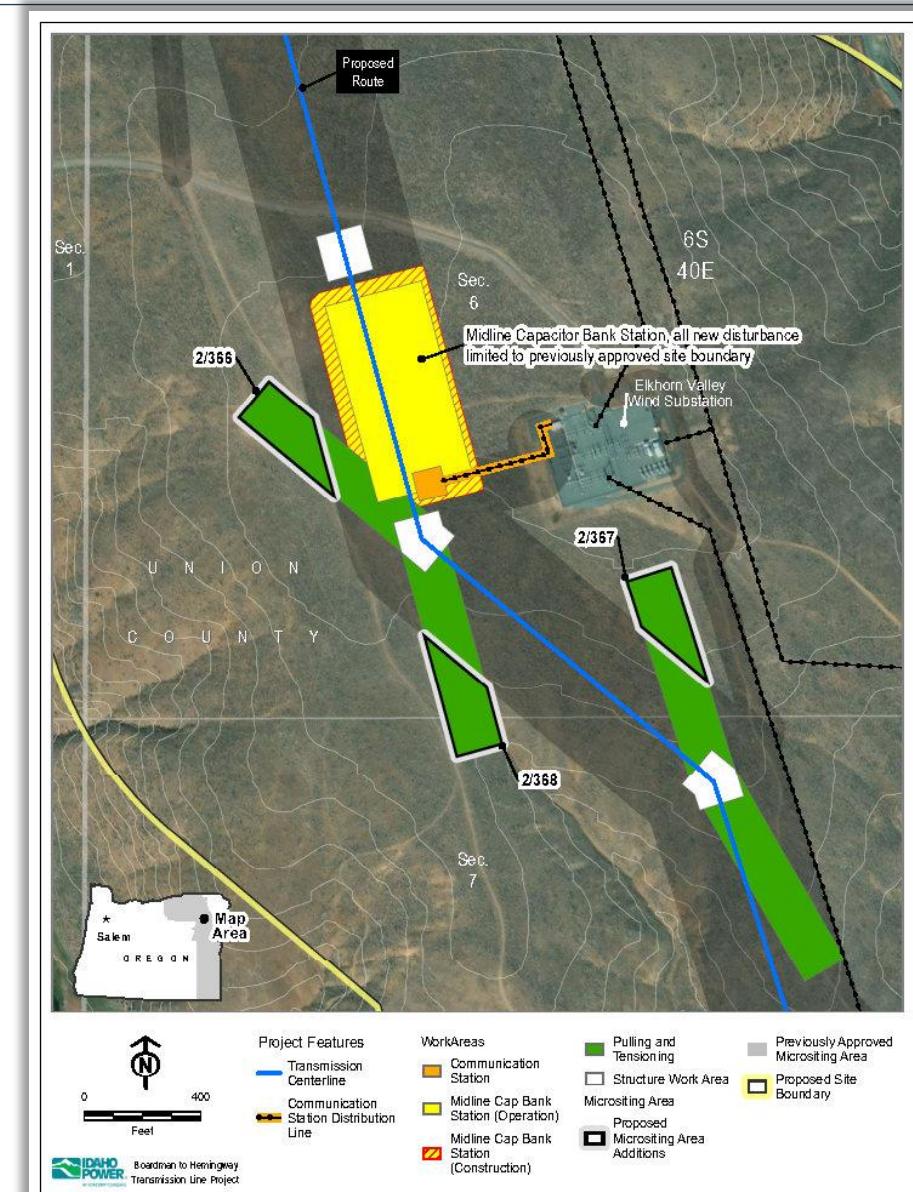
For entire table of proposed RFA2 micrositing area additions/alternatives see DPO Table 2 page 19

B2H RFA2 and DPO

3. Construct and operate a Midline Capacitor Station in Union County

- Midline Capacitor Station has series capacitor banks, which load the transmission line more efficiently and optimally by compensating for the impedance resulting from the line length. Series capacitor banks are commonly installed on longer transmission lines.
- Located on approximately 10 acres within the previously approved micrositing area/site boundary, adjacent to an existing substation and transmission line.

Midline Capacitor Station added to **Recommended Amended Organizational Expertise Condition 1** to address inspections (page 56) and is evaluated in Land Use (page 109).



B2H RFA2 and DPO

3. Construct and operate a Midline Capacitor Station in Union County:

- OAR 345-027-0375(2)(e) - Scope of Council's Review for all amendments to the site certificate. For all requests for amendment, the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate. Because the Midline Capacitor Station is a new type of facility component not previously evaluated, the Department requested and the certificate holder provides an updated cost estimate in RFA2 (page 169)
- To determine whether the amount of bond or letter of credit is adequate: the certificate holder provided and the Department evaluates:
 - The Addition of the Midline Capacitor Station (costs, assumptions, tasks);
 - Updated the format for the retirement cost estimate be incorporated into format that the Department recommends;
 - Update unit costs for all facility components (previously approved costs were in Q3 2016, updated to Q1 2024);
 - Previously amount to restore site was \$140,779,000 (Q3 2016), updated amount is \$170,276,273 (Q1 2024);
 - **Recommended Amended Retirement and Financial Assurance Condition 4 and 5** updated to reflect new unit costs and totals.



B2H RFA2 and DPO

4. Increase the width of some temporary construction roads:

Table 8: Summary of Access Road Classifications and Proposed RFA2 Temporary Dimensions

Access Road Classification		Micrositing Area	Construction Disturbance	Operations Disturbance	Road Prism or Profile Changes	Extent of Work
New Roads	Primitive	200 feet	> 16 feet	10 feet	Yes	Clearing of vegetation or obstructions. Create roads by direct vehicle travel.
	Bladed	200 feet	0-8% slope – 30 feet. 8-15% slope – 45 feet. 15-30% slope – 75 feet. >30% slope – 120 feet 16-35 feet	14 feet	Yes	Clearing of vegetation or obstructions. Create roads by cutting/filling existing terrain.
Existing Roads - Substantial Modification	Substantial Modification, 21-70% Improved	100 feet	0-15% slope – 25 feet >15% slope 60 - feet 16-feet	14 feet	Yes	Reconstruct portions of existing road to improve road function. Possible road prism widening, profile adjustments, horizontal curve adjustments, or material placement.
	Substantial Modification, 71-100% Improved	100 feet	0-15% slope – 25 feet >15% slope 60 - feet 16-30 feet	14 feet	Yes	Reconstruct portions of existing road to improve road function. Possible road prism widening, profile adjustments, horizontal curve adjustments, or material placement.
Existing Roads – No Substantial Modification, 0-20% Improved	No Substantial Modification, 0-20% Improved	NA ¹	NA ¹	NA ¹	No	Repair of existing road to maintain original road function. No betterment of existing road function or design.

B2H: RFA2 and DPO

4. Increase the width of some temporary construction roads:

- Areas where there is a 30 % slope, and maximum temporary width of up to 120 feet for construction equipment would occur in approximately 3 % of new and modified access roads. Roads would be restored to operational width of 14 feet.
- Applicable Site Certificate Conditions:
 - Soil Protection Condition 1 - Conduct all work in compliance with the 1200-C permit / ESCP
 - Fish and Wildlife Condition 1 - Reclamation and Revegetation Plan
 - Public Services Condition 2 - Road Classification Guide and Access Control Plan

B2H RFA2 and DPO

5. Amend language of site certificate condition(s):

- Certificate holder requests Council approval to amend language of site certificate condition(s): GEN-GS-06, GEN-NC-01, PRE-RT-01, CON-TE-02, PRE-FW-03, PRE-FW-04, OPR-FW-03, OPR-FW-04 and OPR-RT-01
- Department recommends Council further amend conditions not limited to the certificate holder's RFA2 proposal:
 - GEN-GS-06 (Cert holder)
 - CON-TE-02 (Cert holder/Department)
 - PRE-FW-03 (Cert holder)
 - PRE-FW-04 (Cert holder)
 - OPR-FW-03 (Cert holder)
 - OPR-FW-04 (Cert holder)
 - GEN-FW-06 (Department)
 - GEN-LU-10 (Department)
 - GEN-NC-01 (Cert holder)
 - PRE-RT-01 (Cert holder/Department)
 - OPR-RT-01(Cert holder/Department)
 - GEN-HC-02 (Department)

[Land Use Condition 17; Final Order on ASC] STANDARD: FISH AND WILDLIFE HABITAT (FW) [OAR 345-022-0060]	
CON-FW-01	During construction, the certificate holder shall not conduct ground-disturbing activities within elk or mule deer winter range between December 1 to March 31. Upon request by the certificate holder, the Department in consultation with ODFW may provide exceptions to this restriction. The certificate holder's request must include a justification for the request, including any actions the certificate holder will take to avoid, minimize, or mitigate impacts to elk and mule deer in the relevant area. [Fish and Wildlife Condition 11; Final Order on ASC]
CON-FW-02	During construction, if active pygmy rabbit colonies or the roost of a State Sensitive bat species is observed <u>during the biological surveys set forth in Fish and Wildlife Conditions 15 and 16</u> , the certificate holder shall submit to the Department for its approval a notification addressing the following: <ol style="list-style-type: none">Identification of the State Sensitive bat species observed;Location of pygmy rabbit colony or bat roost; andAny actions the certificate holder will take to avoid, minimize, or mitigate impacts to pygmy rabbit colony or bat roost.The Department in consultation with the Oregon Department of Fish and Wildlife (ODFW) will review and approve the proposed avoidance, minimization, or mitigation measures prior to the action by the certificate holder to impact State Sensitive bat species roosts or hibernacula. [Fish and Wildlife Condition 12; Final Order on ASC, AMD2]
CON-FW-03	During construction, if the certificate holder will be conducting ground-disturbing activities during the migratory bird nesting season between April 1 and July 15, the certificate holder shall conduct, as applicable, biological surveys for native, non-raptor bird species nests on all portions of <u>micrositing areas the site boundary</u> a maximum of 7 days prior to ground-disturbing activities, regardless of whether those portions have been previously surveyed. If the certificate holder identifies a native, non-raptor bird species nest, the certificate holder shall submit to the Department for its approval a notification addressing the following: <ol style="list-style-type: none">Identification of the native, non-raptor species observed;Location of the nest; andAny actions the certificate holder will take to avoid, minimize, or mitigate impacts to the nest. [Fish and Wildlife Condition 13; Final Order on ASC, AMD2]
GEN-FW-05	ecological, and other natural resources such as (a) federal and state laws regarding antiquities, paleontological resources, and plants and wildlife, including collection and removal; (b) the importance of these resources; (c) the purpose and necessity of protecting them; and (d) reporting and procedures for stop work. Prior to the training, the certificate holder must provide the Department with a copy of training materials that will be used such as Power Point slides, information hand-outs, maps, and other materials. [Fish and Wildlife Condition 6; Final Order on ASC]
GEN-FW-06	Prior to and during construction, the certificate holder shall flag the following environmentally sensitive areas as restricted work zones: <ol style="list-style-type: none"><u>State protected plant species</u>;Wetlands and waterways that are not authorized for construction impacts;Areas with active spatial and seasonal restrictions; andCategory 1 habitat. Prior to construction of a phase or segment of the facility, the certificate holder shall
Boardman to Hemingway Transmission Line Second Amended Site Certificate DATE	
Oregon Energy Facility Siting Council	
GEN-FW-07	submit a mapset showing the location of environmentally sensitive areas and restricted work zones to the department for its approval. The certificate holder shall make the mapset available to all construction personnel. [Fish and Wildlife Condition 7; Final Order on ASC, AMD2]
GEN-FW-08	During construction and operation, the certificate holder shall employ a speed limit of 25 miles per hour or less on private facility access roads. [Fish and Wildlife Condition 8; Final Order on ASC]
GEN-FW-08	The certificate holder shall construct the transmission line to avian-safe design standards, consistent with the certificate holder's Avian Protection Plan (Idaho Power 2015) as provided in Attachment P1-9 of the Final Order on the ASC. Within 30 days of identification of an avian fatality within <u>micrositing areas the site boundary</u> , where predicted causal factor is electrocution or collision, the certificate holder shall report the species name and location identified (Milepost) and shall consult with ODFW and the Department on retrofit technologies or other adaptive management strategy to minimize fatality risk. [Fish and Wildlife Condition 10; Final Order on ASC, AMD2]
STANDARD: SCENIC RESOURCES (SR) [OAR 345-022-0080]	
GEN-SR-01	The certificate holder shall use dull-galvanized steel for lattice towers and non-sacular conductors.

B2H RFA2 and DPO

5. Amend language of site certificate condition(s):

- **Recommended Amended Threatened and Endangered Species Condition 2 (CON-TE-02):**
 - Department and ODAg concur with proposed mitigation, but recommend that the condition be amended to remove the previously allowed use of temporary placement of protective matting; mitigation plan needs to be finalized based upon final engineering and consultation with ODAg.
- **Recommended Amended Fish and Wildlife Condition 7 (GEN-FW-06):**
 - The requirement to flag and avoid all “state protected plant species” may cause conflict with the above condition.
- **Recommended Amended Historic, Cultural and Archeological Resources Condition 2 (GEN-HC-02):**
 - A finalized Section 106 HPMP submitted to Department, the Appendix A.1 Tables would be updated based on the Section 106 outcomes, and that the site-specific and general mitigation measures designated in the PSMMP’s may be relied up to meet EFSC mitigation.

B2H RFA2: Procedural History

Milestone	Responsible Party	Date
Preliminary RFA1	Cert Holder	06/30/2023
Request for Additional Information (RAI)	ODOE	08/29/2023 (ongoing)
Approval of Modified Analysis Area	ODOE	12/20/2023
Complete RFA1 Filed	Cert Holder	04/11/2024
Draft Proposed Order	ODOE	04/16/2024
Draft Proposed Order Public Hearing/Close of Comment Period	EFSC	05/30/2024
Deadline for Certificate Holder to Respond to Comments*	Cert Holder	06/03/2024
EFSC Review of DPO & Public Comments*	EFSC Review of DPO & Public Comments	06/14/2024
Proposed Order	ODOE	TBD
Deadline to Submit Requests for Contested Case/EFSC Review of CC and Final Order	Public/EFSC	TBD

*pending close of comment period and deadline for certificate holder to respond to comments

B2H RAF2: Public Participation at DPO Phase

- The issuance of the DPO notice initiates the opportunity for public comment on the requested amendment;
- The public may submit comments by:
 - Mail, email, public comment portal, hand-delivery, or fax during the comment period (April 16, 2024 to May 30, 2024);
 - Providing oral or written comments at the in-person, webinar/call-in DPO public hearing;
- The Council will not accept public comments on RFA2 or on the DPO after the close of the record. The Department requests the Council hold the record open for the certificate holder, until June 3, 2024, unless modified upon request by certificate holder.



Public Participation at DPO Phase (cont'd)

- Persons commenting on DPO during the comment timeframe are eligible to request a contested case proceeding, which is not an automatic part of the amendment process;
- For consideration in the contested case, issues must:
 - Be submitted within the comment timeframe
 - Be within the jurisdiction of the Council
 - Include sufficient specificity with facts so that the Council, the Department, and the certificate holder understand the issue raised and are afforded an opportunity to respond to the issue (continued on next slide)

*Unless otherwise held open by Council.

Public Participation at DPO Phase (cont'd)

- Threshold for a contested case for a Type A Amendment:
 - Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. And Council must determine whether the preponderance of evidence on the record supports that the portions of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards.
 - A ten minute video describing the Type A Amendment Contested Case threshold is available on YouTube and the link was included in the Public Notice:
- Council Options on Requests for a Contested Case:
 - Hold a contested case – properly raised issue(s) could affect the Council's determination
 - Remand Proposed Order to Department – properly raised issue(s) could be addressed through new findings and/or conditions
 - Deny – request does not include properly raised issue(s)

Agenda Item A (Hearing)

Boardman to Hemingway Transmission Line Public Hearing on Draft Proposed Order for Request for Amendment 2 of Site Certificate

Presiding Officer – Kent Howe, Chair, EFSC

May 30, 2024

B2H: RFA2 DPO Public Hearing

Consideration of Issues in a Possible Contested Case

A person who intends to raise any issue that may be the basis for a contested case must raise an issue:

- that is within the jurisdiction of the Council;
- in person at the hearing or in a written comment submitted to the Department of Energy before the deadline stated in the notice of the public hearing (**May 30, 2024**);
- with sufficient specificity to afford the Council, the Department of Energy and the certificate holder an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.

B2H: RFA2 DPO Public Hearing

Order of Oral Testimony and Comments for this Public Hearing

1. Certificate Holder (testimony or additions to record)
 - Members of Council may ask clarifying questions.
2. Members of the Public (will be called on in the following order):
 - Oral in-person testimony
 - Oral testimony via WebEx
 - Oral testimony via phone
3. Members of Council
4. Certificate Holder's Responses to Comments (optional)

B2H: RFA2 DPO Public Hearing

Testimony

Prior to Testifying, state the following:

- Full name with spelling
- Name of organization or group if you are representing one
- Physical mail or email address if you wish to receive notice of the Proposed Order which includes a description of how to submit a request for contested case

Please Note: If you do not wish to provide your mailing or email address in this format, you may email it to the Department at Kellen.tardaewether@energy.oregon.gov or call the following number and provide the information, including spelling, in a voicemail: 503-586-6551.

B2H: RFA2 DPO Public Hearing

Certificate Holder

The certificate holder may provide/present on anything in the Draft Proposed Order and/or may submit additional information/evidence to supplement the record.

Presiding Officer or Council Members may ask clarifying questions.

B2H: RFA2 DPO Public Hearing

Written Comments

Written comments on Request for Amendment 2 and/or the Draft Proposed Order and may be submitted until the close of the Hearing on May 30, 2024. Written comments may be submitted:

- Via online siting comment portal: <https://odoe.powerappsportals.us/en-US/SitingPublicComment/>
- Via email: Kellen.tardaewether@energy.oregon.gov
- Hand delivery to one of the staff members or by mail to: Oregon Department of Energy; 550 Capitol St. NE; Salem, OR, 97301

B2H: RFA2 DPO Public Hearing

Public

Members of the public may comment on the Draft Proposed Order and/or the Request for Amendment 2.

Presiding Officer or Council Members may ask clarifying questions.

How to Raise Your Hand in Webex:

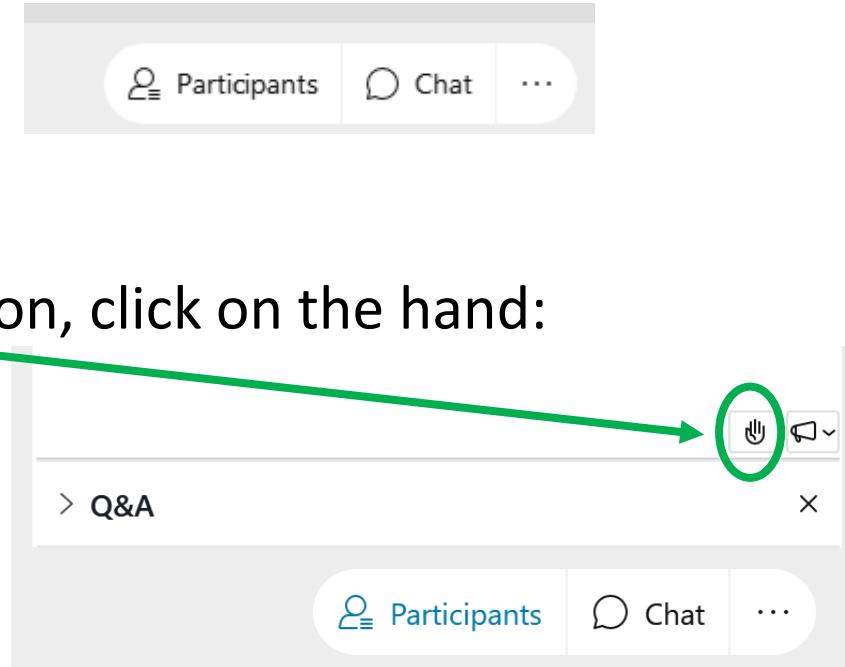
Webinar Participants

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.

B2H: RFA2 DPO Public Hearing

Council

Council may comment about any concerns they have related to the Draft Proposed Order and/or the Request for Amendment 2.

B2H: RFA2 DPO Public Hearing

Certificate Holder's Response to Comments

The certificate holder may respond to any comments by:

- Providing oral responses;
- Submitting additional information/evidence to supplement the record;
- Requesting that the Presiding Officer extend the record to submit additional information/evidence to supplement the record.

B2H: RFA2 DPO Public Hearing

Close of the May 30, 2024 Public Hearing for the
Boardman to Hemingway Transmission Line RFA2
DPO

BREAK

Agenda Item B (Information Item)

Wagon Trail Solar Project Draft Proposed Order Public Hearing

**Informational Presentation – Chase McVeigh-Walker, Senior Siting Analyst
Oregon Department of Energy**

May 30, 2024

Wagon Trail Solar Project: DPO Public Hearing

1. Facility Overview:
2. Public Hearing Overview: Presiding Officer will explain the legal requirements for providing comments on the record and will facilitate the hearing.
3. Public Hearing:
 - a. The Applicant will be provided an opportunity to provide/present on anything in the DPO and/or may submit additional information/evidence to supplement the record.
 - b. Members of the public will be provided an opportunity to comment on the DPO and/or the ASC.
 - c. Council will be provided an opportunity to make comments about any concerns they have related to the DPO and/or the ASC.
 - d. The Applicant will be provided an opportunity to respond to any comments prior to the close of the public hearing tonight and until **5:00 pm Pacific Time (PT) Monday, June 10, 2024**

Energy Facility Siting Council (EFSC) Review



- Consolidated review and oversight of most large-scale energy facilities and infrastructure in Oregon
- 7 Members of EFSC
 - Governor appointed, Senate confirmed – Volunteers from around the State
- ODOE's Siting Division is staff to EFSC



Wagon Trail Solar Project: Project Overview

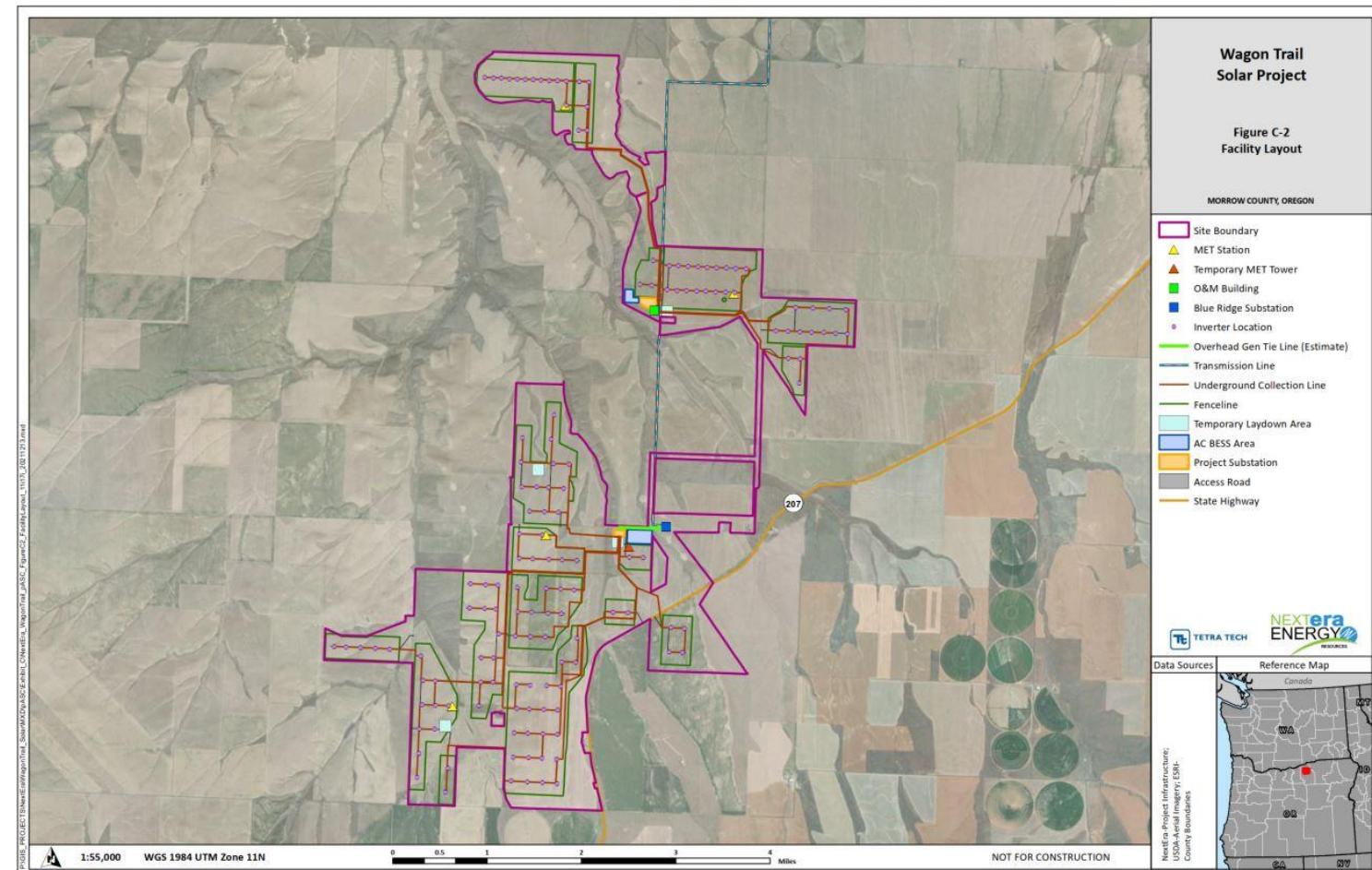
Applicant: Wagon Trail Energy Center, LLC

Proposed Facility: (up to) 500 megawatts (MW) of solar photovoltaic energy generation components.

Location/Site Boundary: 7,450 acres in Morrow County

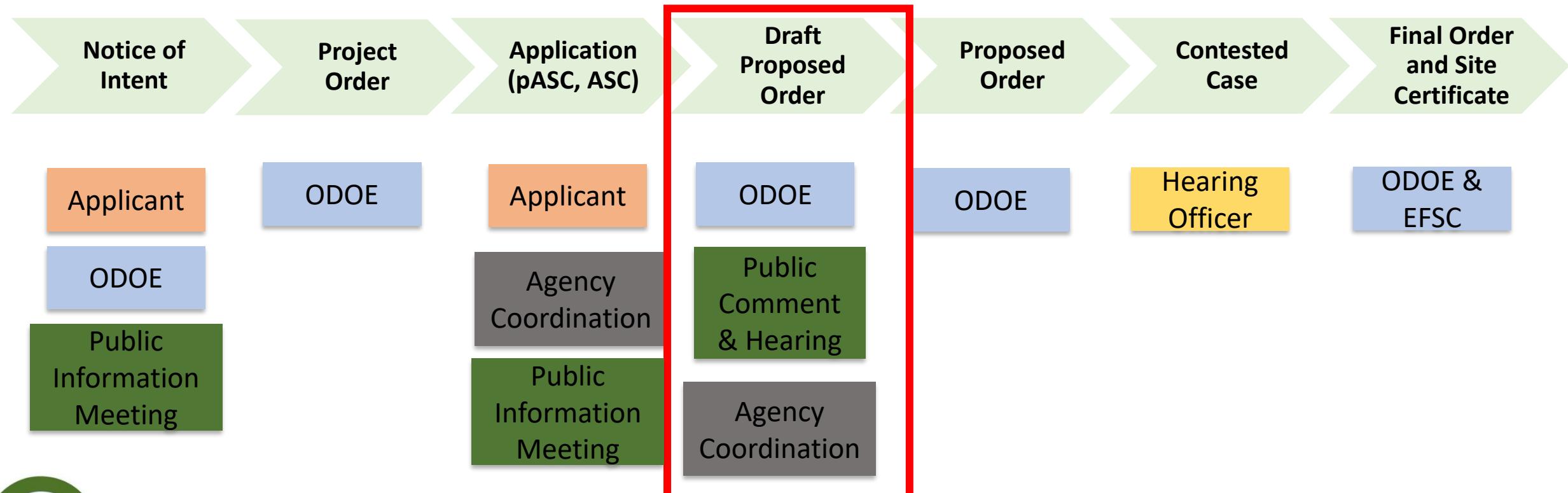
Related or Supporting facilities include:

- 500 MW lithium-ion energy storage system
- (2) collector substations
- a 34.5 kilovolt (kV) collection system
- Operation and Maintenance (O&M) Building
- 0.6 miles of 230 kV transmission line
- Etc.



Energy Facility Siting Process

Application for Site Certificate (ASC)



Wagon Trail Solar Project: Procedural History

Milestone	Responsible Party	Date
Notice of Intent (NOI)	Applicant	11/3/2020
Amended NOI	Applicant	6/11/2021
Preliminary Application for Site Certificate (pASC)	Applicant	8/31/2022
Application for Site Certificate (ASC)	Applicant	1/3/2024
Draft Proposed Order (DPO)	ODOE	5/7/2024
Draft Proposed Order Public Hearing	ODOE/EFSC	5/30/2024
Close of Public Comment Period	Public	6/7/2024
EFSC Review of DPO & Public Comments	EFSC	6/14/2024*
Proposed Order and Notice of Contested Case	ODOE	TBD
Potential Final Decision	EFSC	TBD

*Pending the close of the record of the DPO

Public Participation at DPO Phase

- The issuance of the DPO notice initiates the opportunity for public comment on the ASC;
- Notice opens comment period and provides details on public hearing;
- The public may submit comments by:
 - Mail, email, public comment portal, hand-delivery, or fax during the comment period;
 - Providing oral or written comments at the in-person, webinar/call-in DPO public hearing.



Public Participation at DPO Phase (cont'd)

- The Council will not accept comments on the ASC or on the DPO after the close of the record on June 7, 2024*;
- Persons commenting on DPO during the comment timeframe are eligible to request a contested case proceeding, which is not an automatic part of the amendment process;
- For consideration in the contested case, issues must:
 - Be submitted within the comment timeframe.
 - Be within the jurisdiction of the Council
 - Include sufficient specificity with facts so that the Council, the Department, and the applicant understand the issue raised and are afforded an opportunity to respond to the issue;

*Unless otherwise held open by Council.

Agenda Item B (Hearing)

Wagon Trail Solar Project Public Hearing on Draft Proposed Order On Application for Site Certificate

Presiding Officer – Kent Howe, Chair, EFSC

May 30, 2024

Wagon Trail Solar DPO Public Hearing

Consideration of Issues in a Contested Case

A person who intends to raise any issue that may be the basis for a contested case must raise an issue:

- that is within the jurisdiction of the Council;
- in person at the hearing or in a written comment submitted to the Department of Energy before the deadline stated in the notice of the public hearing (**June 7, 2024**);
- with sufficient specificity to afford the Council, the Department of Energy and the certificate holder an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.

Wagon Trail Solar Project: DPO Public Hearing

Order of Oral Testimony and Comments for this Public Hearing

1. Applicant (testimony or additions to record)
 - Members of Council may ask clarifying questions.
2. Members of the Public (will be called on in the following order):
 - Oral in-person testimony
 - Oral testimony via WebEx
 - Oral testimony via phone
3. Members of Council
4. Certificate Holder's Responses to Comments (optional)

Wagon Trail Solar Project: DPO Public Hearing

Testimony

Prior to Testifying, state the following:

- Full name with spelling
- Name of organization or group if you are representing one
- Physical mail or email address if you wish to receive notice of the Proposed Order which includes a description of how to submit a request for contested case

Please Note: If you do not wish to provide your mailing or email address in this format, you may email it to the Department at Chase.MCVEIGH-WALKER@energy.oregon.gov or call the following number and provide the information, including spelling, in a voicemail: (971) 600-5323.

Wagon Trail Solar Project: DPO Public Hearing

Applicant

The applicant may provide/present on anything in the Draft Proposed Order and/or may submit additional information/evidence to supplement the record.

Presiding Officer or Council Members may ask clarifying questions.

Wagon Trail Solar Project: DPO Public Hearing

Written Comments

Written comments on the Application for Site Certificate and/or the Draft Proposed Order and may be submitted until the close of the Hearing on June 7, 2024 at 5:00 p.m. Pacific Time. Written comments may be submitted:

- Via online siting comment portal: <https://odoe.powerappsportals.us/en-US/SitingPublicComment/>
- Via email: Chase.MCVEIGH-WALKER@energy.oregon.gov
- Hand delivery to one of the staff members or by mail to: Oregon Department of Energy; 550 Capitol St. NE; Salem, OR, 97301

Wagon Trail Solar Project: DPO Public Hearing

Public

Members of the public may comment on the Draft Proposed Order and/or the ASC.

Presiding Officer or Council Members may ask clarifying questions.

How to Raise Your Hand in Webex:

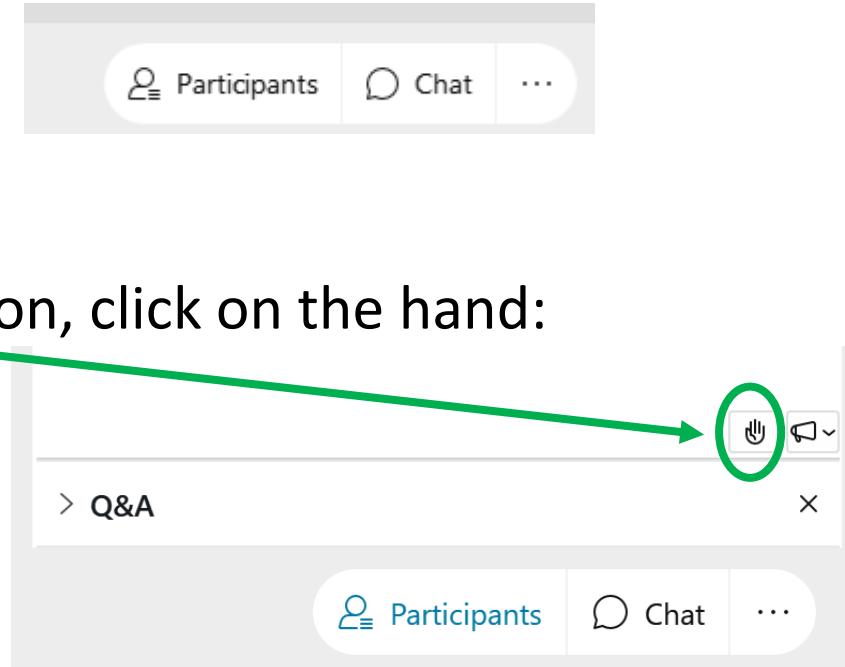
Webinar Participants

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.

Wagon Trail Solar Project: DPO Public Hearing

Council

Council may comment about any concerns they have related to the Draft Proposed Order and/or the ASC.

Wagon Trail Solar Project: DPO Public Hearing

Applicant's Response to Comments

The applicant may respond to any comments by:

- Providing oral responses
- Submitting additional information/evidence to supplement the record
- Requesting that the Presiding Officer extend the record to submit additional information/evidence to supplement the record

Wagon Trail Solar Project: DPO Public Hearing

Close of the comment period is June 7, 2024 at
5:00 PM Pacific Time

RECESS UNTIL TOMORROW MORNING
AT 8:30 AM

Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Port Of Morrow
Riverfront Center
Riverfront Room
2 Marine Dr. NE
Boardman Or

May 30-31, 2024



Friday, May 31, 2024

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 do 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 C (Action Item & Information Item)

Consent Calendar

- **April Council Meeting Minutes**
- **Council Secretary Report**

May 31, 2024

Agenda Item D (Action Item)

Wheatridge Energy Facility East – Council Decision on Any Submitted Requests for Contested Case, Possible Material Change Hearing and Public Notice of Hearing to Adopt Final Order

Christopher Clark, Senior Siting Analyst

May 31, 2024

WREFE RFA1- Agenda Item Overview

- Facility Overview and Site Certificate History
- Request for Amendment 1 (RFA1) Proposed Changes and Procedural History
- Comments Received on Draft Proposed Order
- Proposed Order and Staff Recommendation to approve as Final Order
- Council Deliberation/Possible Decision

WREFE RFA1- Approved Facility Overview

Certificate Holder

Wheatridge East Wind, LLC

Parent Company

NextEra Energy Resources, LLC

Facility Type

Wind + Battery

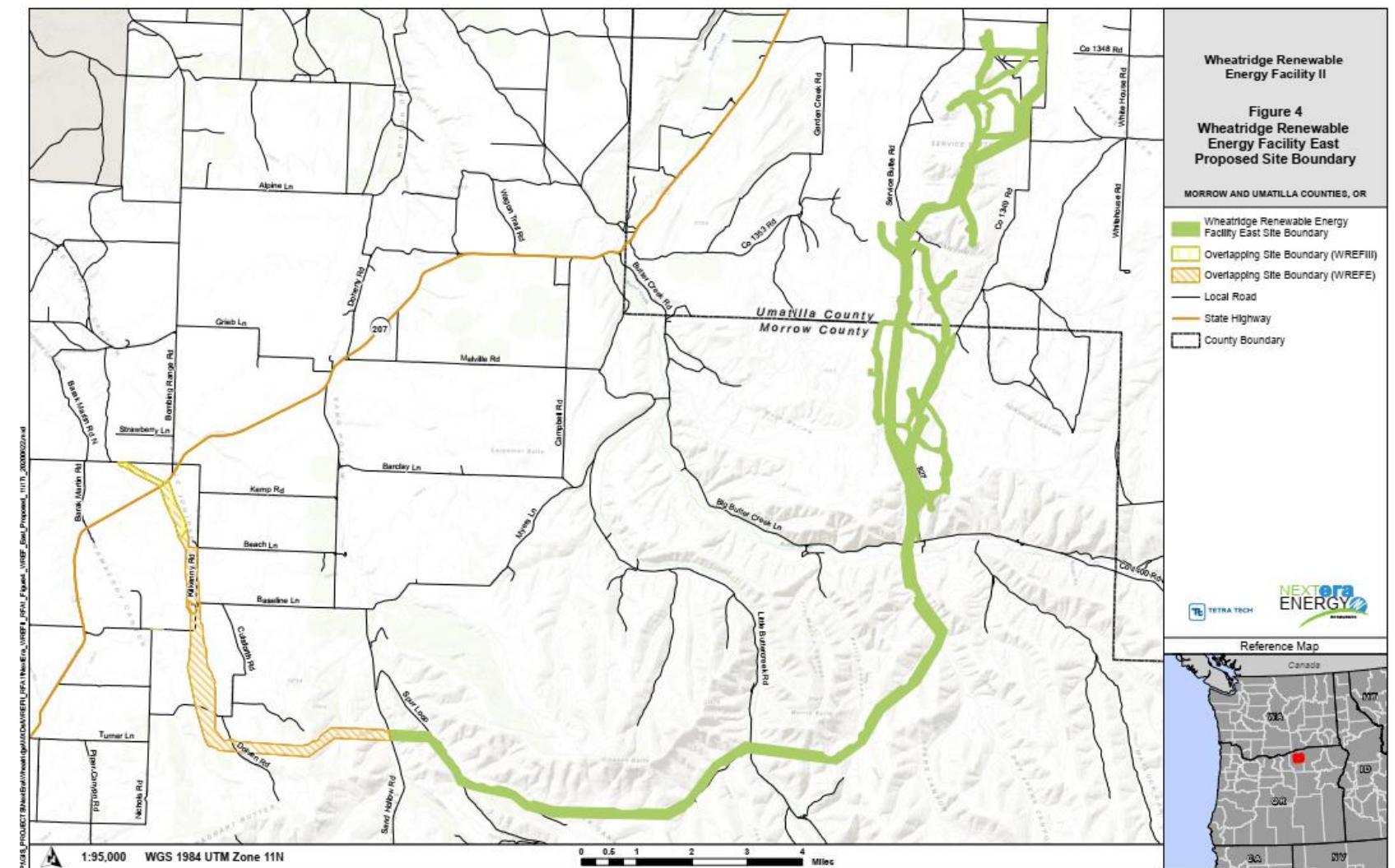
Capacity

200 MW Wind

20 MW Battery Storage

Site Boundary

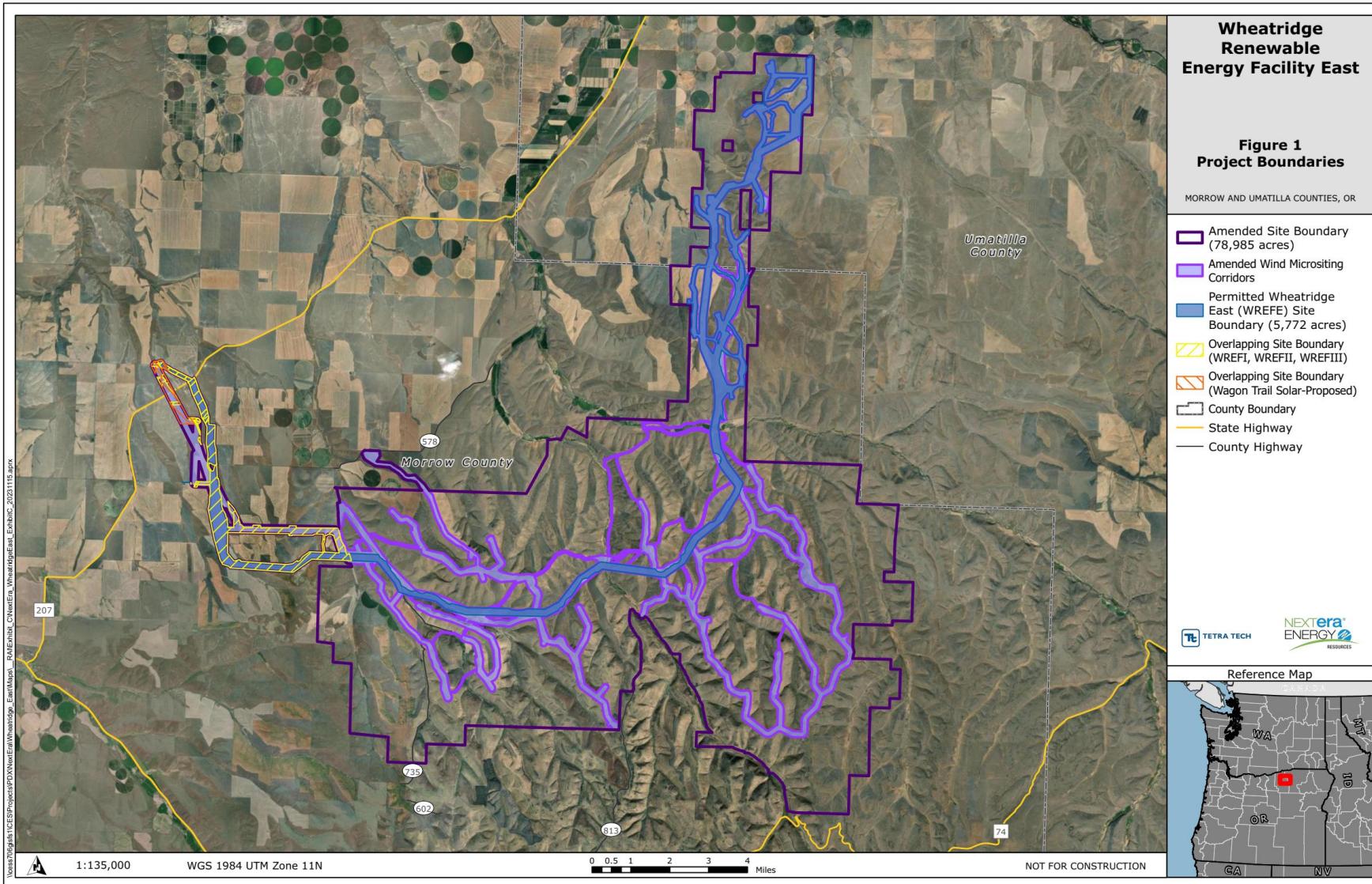
4,582-acre site in Morrow and Umatilla counties



WREFE RFA1- Amendment Request

Area	Approved	Proposed	Change
Site Boundary (acres)	4,582	78,985	74,403
Micrositing Corridor (acres)	4,582	14,640	10,058
Temp. Disturbance Area (acres)	486	1,121	635
Perm. Disturbance Area (acres)	47	165	118

WREFE RFA1- Amendment Request



WREFE RFA1- Amendment Request

Components	Approved	Proposed	Change
Max. Number of Turbines	66	107	41
Max. Total Nameplate Capacity (MW)	200	300	100
Overhead (OH) 34.5 kV Collector Line (mi.)	11	0	-11
Underground Collector Line (mi.)	30	95	65
OH 230kV Transmission Line (mi.)	32	26	-5
Permanent Access Roads (mi.)	20	76	56
Temporary Access Roads (mi.)	31	15	-16

Deadline	Approved	Proposed	Change
Construction Commencement	May 24, 2020	N/A	N/A
Construction Completion	May 24, 2023	May 24, 2026	3 Years



OREGON
DEPARTMENT OF
ENERGY

(cont'd)

WREFE RFA1- Procedural History

Milestone	Responsible Party	Date
Preliminary RFA1	Cert Holder	5/16/2023
Request for Additional Information (RAI)	ODOE	7/14/2023
Complete RFA1	Cert Holder	1/30/2024
Draft Proposed Order	ODOE	2/29/2024
Draft Proposed Order Public Hearing	EFSC	3/21/2024
Close of Public Comment Period	Public	4/4/2024
EFSC Review of DPO & Public Comments	EFSC	4/19/2024
Proposed Order	ODOE	4/25/2024
Deadline for Contested Case Requests	EFSC	5/27/2024
Potential Final Decision	EFSC	5/31/2024

WREFE RFA1- Council Scope of Review

OAR 345-027-0375

- Because RFA1 proposes to add area to the site boundary, and extend the construction completion deadline, the Council must determine that the preponderance of evidence on the record supports the following conclusions:
 - The portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application.
 - After considering any changes in facts or law since the date the current site certificate was executed, the entire facility complies with all laws and Council standards applicable to an original site certificate application.
 - The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate

WREFE RFA1- DPO Public Comments

DPO Public Comment Period (February 29 – April 4, 2024):

- 4 public comments at March 21 hearing
- 20 written comments
 - 16 public comments
 - 3 reviewing agency comments (ODAv, ODFW, Morrow County)
 - Certificate holder comments
- Certificate holder responses provided on April 8

WREFE RFA1- DPO Public Comments

- Wildfire risk assessment and Wildfire Mitigation Plan
- Noxious Weed Control
- Emergency Communications Infrastructure
- Visual Impacts of Turbines on Gleason Butte
- Raptor Nest Buffers
- Wildlife Monitoring and Mitigation
- Lawrence milkvetch mitigation
- Economic Benefits & Workforce Development
- Crop Loss Payments for Transmission Line Siting
- Codes and standards for facility design
- Visual Impacts on the Oregon Historic National Trail
- Road Use Agreements and Traffic Impacts

WREFE RFA1- Council Review of Proposed Order

The Proposed Order does not recommend additional substantive changes or amended or new conditions from the DPO for the following Council standards:

- **Organizational Expertise** (Section III.B., p. 46-53)
- **Structural** (Section III.C., p. 53-61)
- **Soil Protection** (Section III.D., p. 61-72)
- **Protected Areas** (Section III.F., p. 132-144)
- **Scenic Resources** (Section III.J., p. 200-205)
- **Recreation** (Section III.L., p. 214-222)
- **Waste Minimization** (Section III.O., p. 255-262)
- **Public Health and Safety Standards for Wind Energy Facilities** (Section III.P. p. 262-265)
- **Cumulative Effects Standard for Wind Energy Facilities** (Section III.Q., p. 265-274)
- **Siting Standards for Transmission Lines** (Section III.R. p. 274-276)
- **Noise Control Regulations** (Section IV.A. p. 276-287)
- **Removal-Fill** (Section IV.B. p. 287-289)
- **Water Rights** (Section IV.C. p. 289-290)

WREFE RFA1- Council Review of Proposed Order

DPO to Proposed Order Changes

Recommended Amended Conditions GEN-GS-01 & GEN-GS-02 (Section III.A.1.1., p. 41-44):

- Adds new construction commencement and completion deadlines for facility components that would be sited in areas proposed to be added to the site by RFA1
- Extends the construction completion deadline for components in previously approved areas by three years, rather than two.

Recommended Amended Condition PRE-RF-02 (Section III.G.1.4., p. 152):

Clarifies process for adjusting the initial retirement assurance amount to reflect final facility design configuration.

WREFE RFA1- Council Review of Proposed Order

DPO to Proposed Order Changes

Recommended Amended Condition PRE-LU-03 (Section III.H.1.3., p. 183-184):

Draft Noxious Weed Control Plan amended to:

- Clarify scope of plan finalization and applicability of treatment and monitoring during construction activities
- Require submittal of pre-construction treatment plan for review and approval by the Department, in consultation with the appropriate county weed supervisor
- Require implementation of approved preconstruction treatment plan prior to ground disturbance

WREFE RFA1- Council Review of Proposed Order

DPO to Proposed Order Changes

Recommended Amended Condition CON-FW-02 (Section III.H.1.3., p. 137-139):

- Reduces seasonal avoidance buffer for ferruginous hawk nests from 0.6 to 0.5 miles
- Allows restrictions to be lifted if a nest is determined to be unoccupied for the nesting season on or after May 31.

Recommended Amended Condition PRE-TE-02 (Section III.I.1.2., p. 193-194):

Requires the Wildlife Monitoring and Mitigation Plan be finalized prior to operations, rather than prior to construction.

WREFE RFA1- Council Review of Proposed Order

DPO to Proposed Order Changes

Recommended Condition PRE-HC-04 (Section III.K.1.3., p. 212-213):

Requires certificate holder to submit a complete a Section 106 Documentation Form for the Bartholomew-Myers Farm, an NRHP eligible property in the viewshed of the facility, prior to construction.

Recommended Amended Condition PRE-PS-05 (Section III.M.1.11., p. 235-238):

Requires Emergency Management Plan to include additional information regarding how fire suppression and response activities will be carried out at the site in the event of a fire and requires additional consultation with local fire service districts and other emergency service providers prior to finalization of the plan.

WREFE RFA1- Council Review of Proposed Order

DPO to Proposed Order Changes

Recommended Condition PRE-WP-01 (Section III.N.1.2., p. 247-255):

- Specifies information and evaluation to be included in both the Construction and Operational Wildfire Mitigation Plans.
- Requires draft plans be finalized, in part, based on consultation by the certificate holder with local fire service districts and other emergency service providers.

Recommended Amended Condition CON-WP-01 (Section III.N.1.2. Page 247-255):

Requires all onsite employees and contractors to implement and adhere to Construction Wildfire Mitigation Plan.

WREFE RFA1- Council Review of Proposed Order

DPO to Proposed Order Changes

Recommended Amended Condition PRO-WP-01 (Section III.N.1.2., p. 247-255):

- Requires O&M Wildfire Mitigation Plan be updated based on as-built facility and wildfire risk prior to facility operations.
- Requires plan to be updated annually to reflect changes in wildfire risk at the site and of service capacity of local fire protection agencies to respond to the site, as applicable.

Wheatridge Renewable Energy Facility East RFA1 Council Review of Proposed Order

Department Recommends in Proposed Order that Council:

- Find, based on a preponderance of the evidence on the record, and with recommended new, amended and existing site certificate conditions, that the site certificate may be amended as requested.
- Make the above-noted additional findings of fact, as presented in the Proposed Order, for each applicable EFSC Standard.
- Approve the Proposed Order as the Final Order, with new, existing, and amended conditions, and issue the amended site certificate.

WREFE RFA1- Consideration of Contested Case Requests

Requests for Contested Case Received Before May 27, 2024, at 5:00 PM PT

- If timely requests are received, to grant a contested case proceeding the Council must determine:
 - Whether the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request as provided under OAR 345-027-0371(7).
 - To determine whether any properly raised issue justifies a contested case proceeding on that issue, Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.

WREFE RFA1- Consideration of Contested Case Requests

Council Options on Contested Case Requests

- Hold a contested case – properly raised issue(s) could affect the Council's determination
- Remand Proposed Order to Department – properly raised issue(s) could be addressed through new findings and/or conditions
- Deny – request does not include properly raised issue(s)

WREFE RFA1- Energy Facility Siting Council Authority

EFSC Duties

- Review, evaluate and issue orders approving or denying applications for energy facilities
- Issue site certificates for the construction and operation of energy facilities that meet all Council standards

EFSC Authority

- To issue a site certificate, EFSC must determine the proposed facility complies with:
 - Council Standards (as adopted in accordance with ORS 469.503(1) and ORS 469.501)
 - All other statutes and administrative rules identified by the project order, as amended, as applicable to the issuance of the site certificate

Council Options

Option 1 - Recommended

Approve Proposed
Order as Final Order

Option 2

Approve Proposed
Order as Final Order,
with changes

Option 3

Reject Proposed Order

Council Deliberation

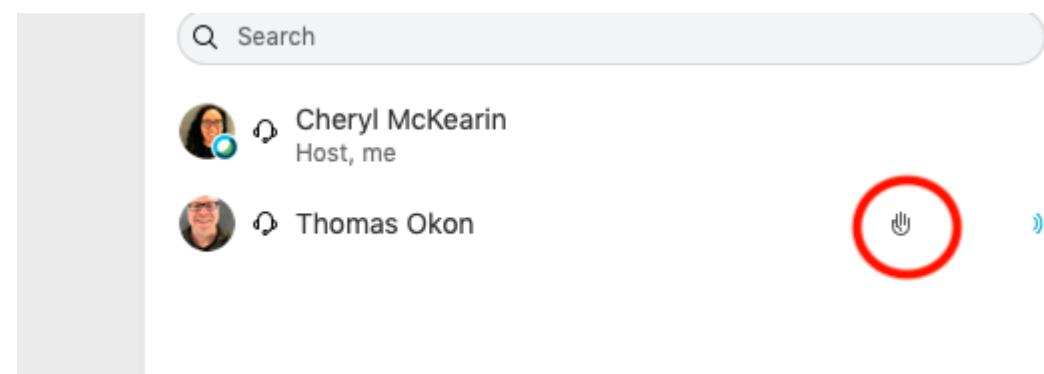
Potential Material Change Hearing

Agenda Item E (Information Item)

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:

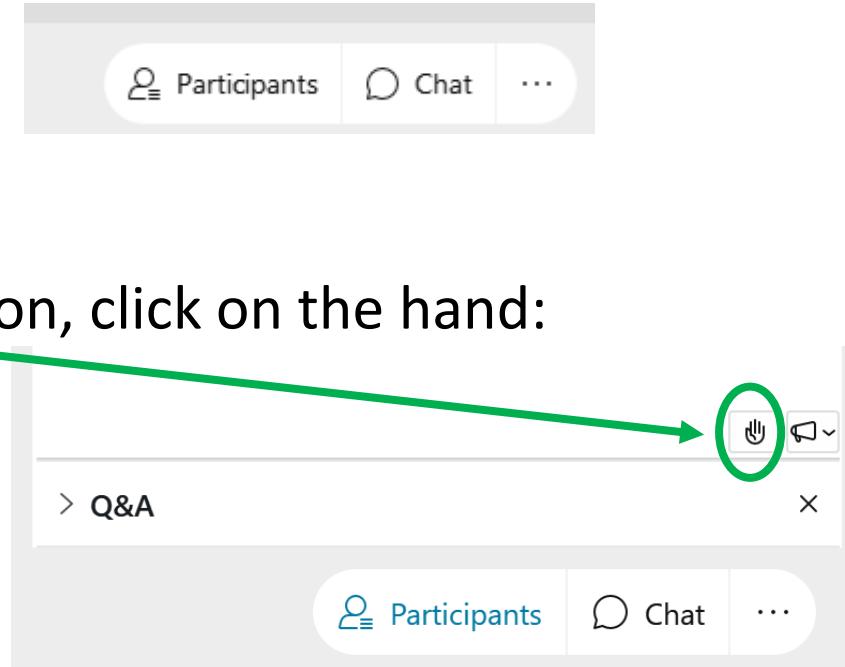
Webinar Participants

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.

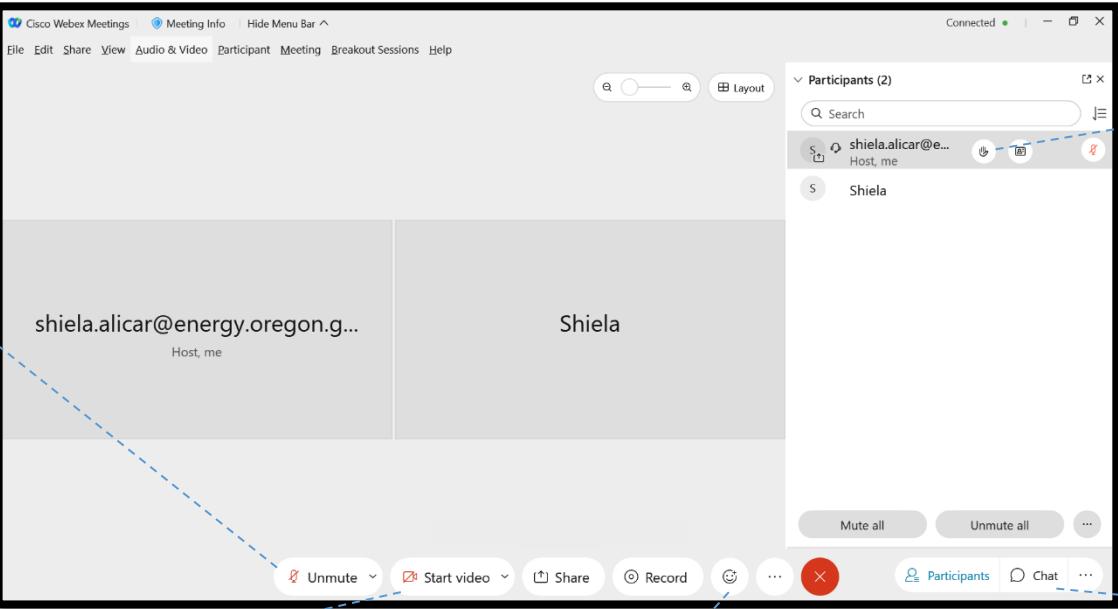


Phone Participants

Press *3 on your telephone keypad to raise your hand.

Press *3 again on your telephone keypad to lower your hand.

USING WEBEX



Audio Options

Mute Microphone On
Unmute Microphone Off

Video Options

Stop video Webcam On
Start video Webcam Off

Reactions

Raise hand
Send reaction (emojis)
Recognize hand gestures

Participants

Participants (2)
shiela.alicar@energy.oregon.gov Host, me
Shiela

Meeting Controls

Mute all Unmute all
Unmute Start video Share Record Chat

Second Raise Hand Option

You can also click on the hand next to your name in the Participant list to raise your hand.

Participants (2)
Raise hand (Ctrl + Shift + R)
shiela.alicar@energy.oregon.gov Host, me

Chat

You can chat to Everyone in the meeting.

To: Everyone
Enter chat message here

From shiela.alicar@energy.oregon.gov to everyone: 12:59 PM
Hello to Everyone!

From shiela.alicar@energy.oregon.gov to Shiela (presenter): 1:00 PM
Hello to Shiela!

To: salicar
Everyone
Shiela (Host)

Click to Raise your hand.

Click on Lower hand when you are done.

You can send a private message to the Host or Presenter (or all Panelists when there is a Panel).



BREAK

Agenda Item F (Action Item)

Leaning Juniper IIA Council Decision on Any Submitted Requests for Contested Case, and Possible Material Change Hearing and Public Notice of Hearing to Adopt Final Order

Chase McVeigh Walker, Senior Siting Analyst

May 31, 2024

LJIIA RFA3: Agenda Item Overview

- Facility Overview and Site Certificate History
- Request for Amendment 3 (RFA3) Proposed Changes and Procedural History
- Comments Received on Draft Proposed Order
- Proposed Order and Staff Recommendation to approve as Final Order
- Council Deliberation/Possible Decision

LJIIA RFA3: Approved Facility Overview

Certificate Holder

Leaning Juniper Wind Power II, LLC

Parent Company

Avangrid Renewables, LLC

Facility Type

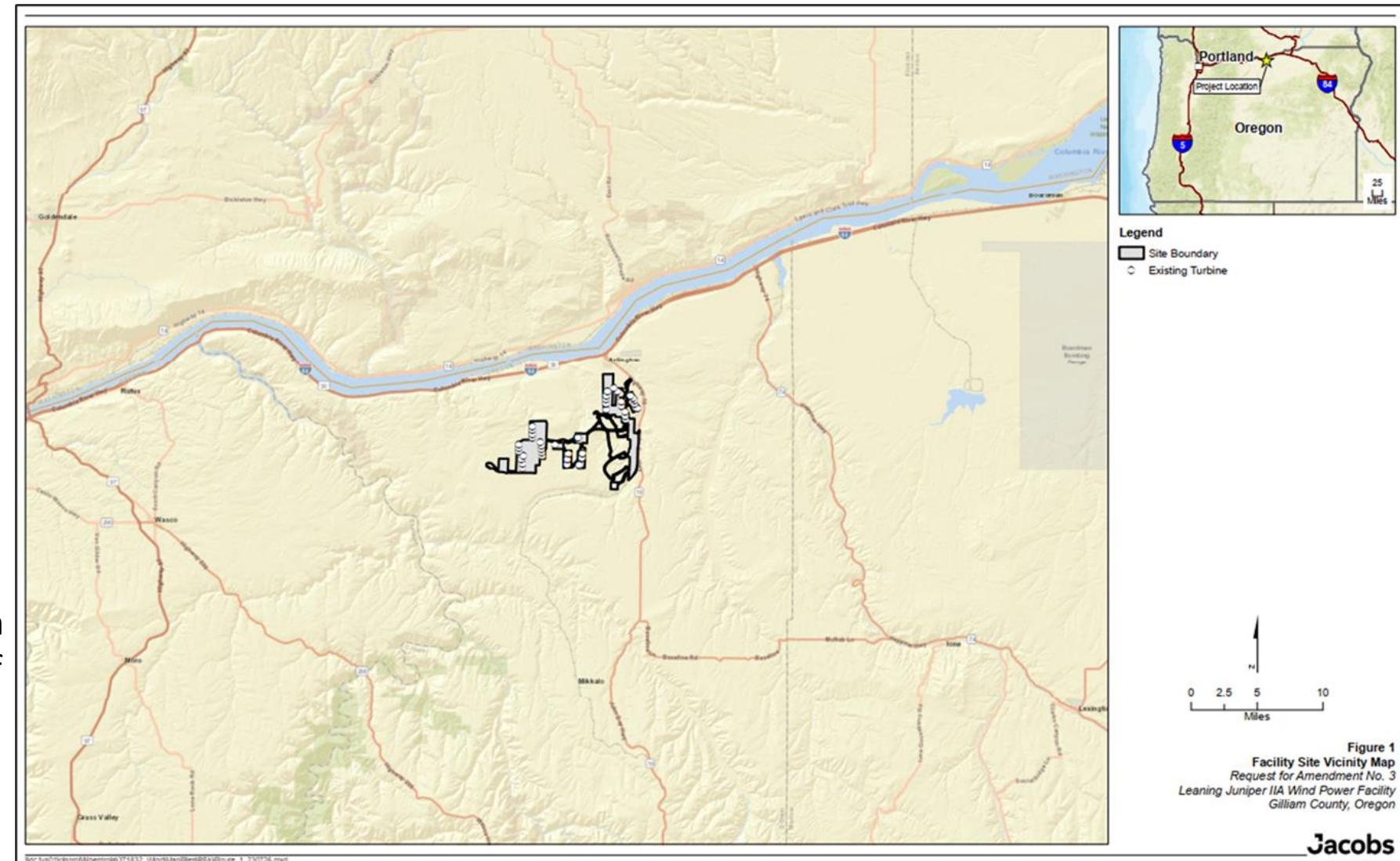
Wind

Capacity

90.3 MW

Site Boundary

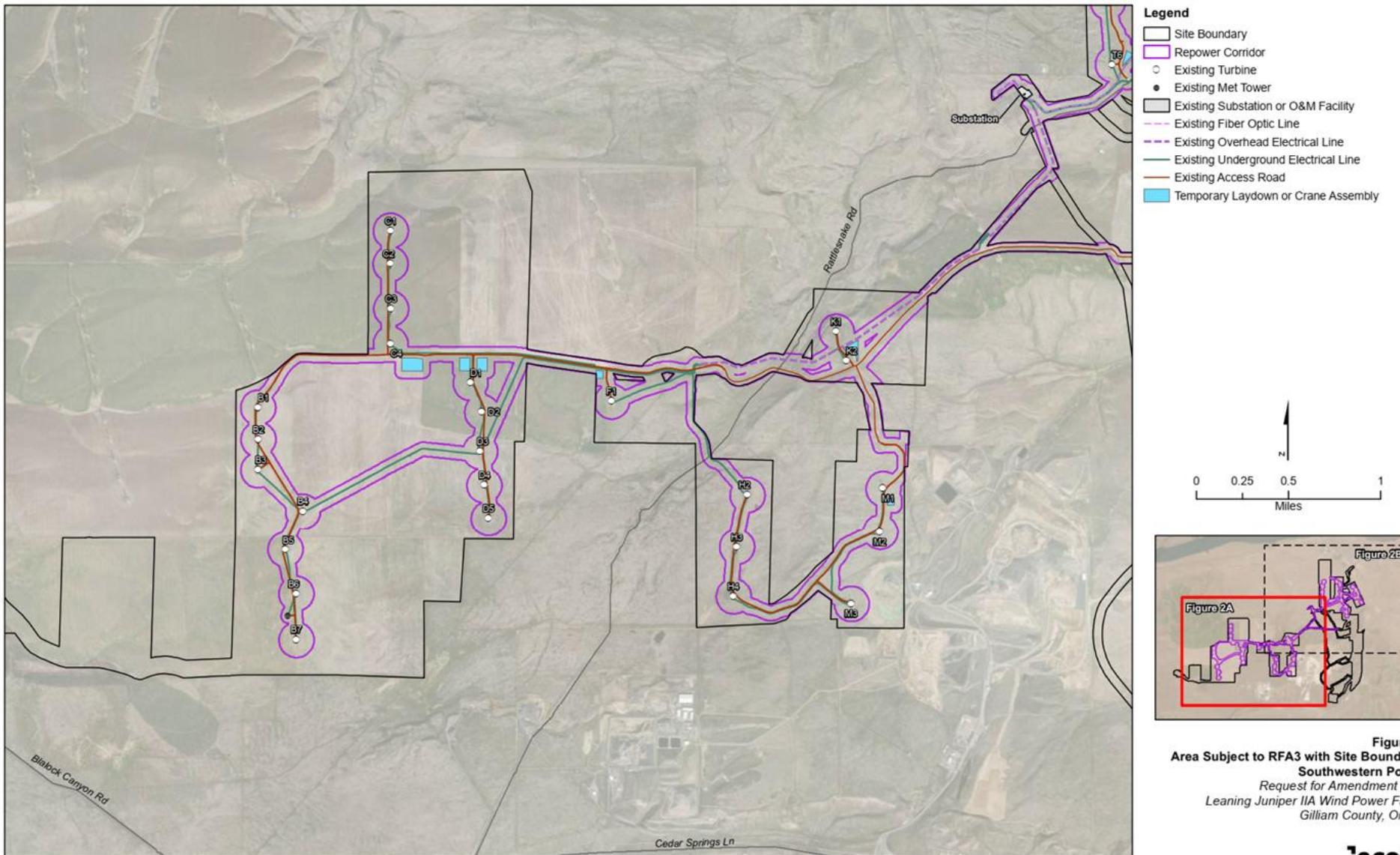
6,404 acres in Gilliam County, south of the City of Arlington, and west of State Highway 19



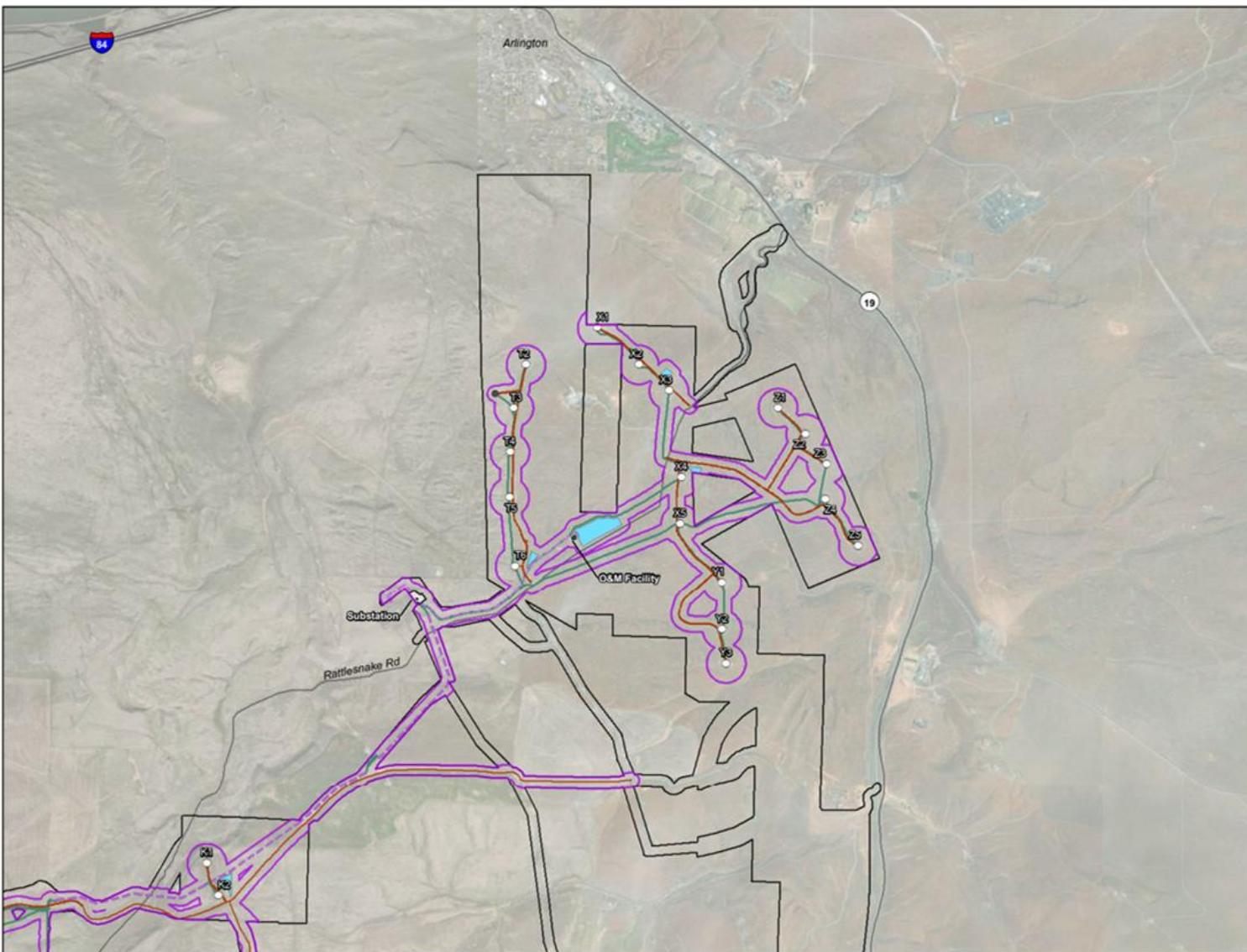
LJIIA RFA3: Amendment Request

- Repower 36 wind turbines (replacement of rotors, nacelles and generator; and foundation reinforcement); increase blade tip height from 404 to 453 feet.
- Temporarily disturb approximately 396.2 acres within a proposed RFA3 repower corridor.
- Install approximately 19 miles of a new underground, 34.5 kilovolt (kV) collector line system.
- Reduce quantity of operating turbines at the facility from 43 to 40 (includes the already decommissioned Turbine “Z2”, and the decommissioning of turbines “Z1” and “M3”)
- New conditions

LJIIA RFA3: Amendment Request



LJIIA RFA3: Amendment Request



Legend

- Site Boundary
- Repower Corridor
- Existing Turbine
- Existing Met Tower
- Existing Substation or O&M Facility
- Existing Fiber Optic Line
- Existing Overhead Electrical Line
- Existing Underground Electrical Line
- Existing Access Road
- Temporary Laydown or Crane Assembly

0 0.25 0.5 1
Miles

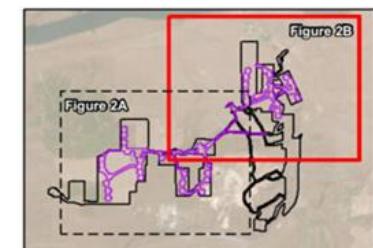


Figure 2B
Area Subject to RFA3 with Site Boundary –
Northeastern Portion
Request for Amendment No. 3
Leaning Juniper IIA Wind Power Facility
Gilliam County, Oregon

LJIIA RFA3: Procedural History

Milestone	Responsible Party	Date
Preliminary RFA3	Cert Holder	9/22/2023
Request for Additional Information (RAI)	ODOE	11/21/2023
Complete RFA3	Cert Holder	2/14/2024
Draft Proposed Order	ODOE	2/29/2024
Draft Proposed Order Public Hearing	EFSC	3/21/2024
Close of Public Comment Period	Public	3/29/2024
EFSC Review of DPO, Public Comments, and Responses	EFSC	4/19/2024
Proposed Order and Notice to Request a Contested Case	ODOE	4/24/2024
Deadline for Contested Case Requests	EFSC	5/24/2024
EFSC Review of Proposed Order and Possible Final Decision	EFSC	5/31/2024

LJIIA RFA3: Council Scope of Review

OAR 345-027-0375

- The Council must determine that the preponderance of evidence on the record supports the following conclusions:
 - The facility, with the proposed change, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change;
 - The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate

LJIIA RFA3: Council Review of Proposed Order

Based on the Department's review of information on the record of RFA3, including *public comments received on the record of the DPO*, the Department does not identify additional substantive changes or recommend amended or new conditions for the following Council standards:

- **Structural Standard** (DPO Section III.C, pg. 21-28)
- **Soil Protection** (DPO Section III.D, pg. 28-33)
- **Land Use** (DPO Section III.E, pg. 33-42)
- **Protected Areas** (DPO Section III.F, pg. 42-52)
- **Threatened and Endangered Species** (DPO Section III.I, pg. 68-70)
- **Historic, Cultural, and Archaeological Resources** (DPO Section III.K, pg. 76-81)
- **Scenic Resources** (DPO Section III.J, pg. 70-76)
- **Recreation** (DPO Section III.L, pg. 82-86)
- **Public Services** (DPO Section III.M, pg. 86-89)
- **Public Health and Safety Standards for Wind Energy Facilities** (DPO Section III.P, pg. 101-103)
- **Cumulative Effects Standard for Wind Energy Facilities** (DPO Section III.Q, pg. 103-105)
- **Noise Control Regulations** (DPO Section IV.A, pg. 105-110)
- **Removal-Fill** (DPO Section IV.B, pg. 110-114)
- **Water Rights** (DPO Section IV.C, pg. 114)

LJIIA RFA3: Council Review of Proposed Order

DPO Public Comment Period (February 29, 2024 - March 29, 2024):

Three written comments submitted before **March 29** deadline

- 1 public comment
- 1 reviewing agency comment (ODAv)
- Certificate holder comments

Certificate holder provided responses on **April 1, 2024**.

LJIIA RFA3: Council Review of Proposed Order

DPO to Proposed Order Changes

Recommended Amended Site Certificate Condition 27: The Department recommends Council amend the language of Condition 27, as reflected in the DPO, to reflect the amended Condition language for Condition 27 as reflected in the draft Third Site Certificate. (Section III.A.1., Page 21)

Recommended Amended Site Certificate Conditions 30 and 122: The Department recommends the Council amend both conditions by removing “appropriate” from both conditions, as it is not necessary to include to reserve the right to adjust the contingencies, and is also a subjective threshold and undefined. (Section III.G.1., Pages 64-65)

LJIIA RFA3: Council Review of Proposed Order

Department Recommends in Proposed Order that Council:

- Find, based on a preponderance of the evidence on the record, and with recommended new, amended and existing site certificate conditions, that the site certificate may be amended as requested.
- Make the above-noted additional findings of fact, as presented in the Proposed Order, for each applicable EFSC Standard.
- Approve the Proposed Order as the Final Order, with new, existing, and amended conditions, and issue the third amended site certificate for the Leaning Juniper IIA Wind Power Facility.

LJIIA RFA3: Consideration of Contested Case Requests

Requests for Contested Case Received Before May 24, 2024, at 5:00 PM PT

- If timely requests are received, to grant a contested case proceeding the Council must determine:
 - Whether the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request as provided under OAR 345-027-0371(7).
 - To determine whether any properly raised issue justifies a contested case proceeding on that issue, Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.

LJIIA RFA3: Consideration of Contested Case Requests

Council Options on Contested Case Requests

- Hold a contested case – properly raised issue(s) could affect the Council's determination
- Remand Proposed Order to Department – properly raised issue(s) could be addressed through new findings and/or conditions
- Deny – request does not include properly raised issue(s)

LJIA RFA3: Energy Facility Siting Council Authority

EFSC Duties

- Review, evaluate and issue orders approving or denying applications for energy facilities
- Issue site certificates for the construction and operation of energy facilities that meet all Council standards

EFSC Authority

- To issue a site certificate, EFSC must determine the proposed facility complies with:
 - Council Standards (as adopted in accordance with ORS 469.503(1) and ORS 469.501)
 - All other statutes and administrative rules identified by the project order, as amended, as applicable to the issuance of the site certificate

Council Options

Option 1 - Recommended

Approve Proposed
Order as Final Order

Option 2

Approve Proposed
Order as Final Order,
with changes

Option 3

Reject Proposed Order

Council Deliberation

Agenda Item G (Action Item)

Contested Case Rulemaking

Thomas Jackman, Rules Coordinator

May 31, 2024

CC Rulemaking: Agenda Overview

- Background Rulemaking
- Review of:
 - Rulemaking
 - Review of Public Comments
- Next Steps

CC Rulemaking: Background

We Are Here



CC Rulemaking: Recommended New NOPR



CC Rulemaking: Background

Scope and Objectives

1. Reorder and reorganize the rules to better match the flow of the contested case process.
2. Update the rules to reflect a proposed adoption of the Office of Administrative Hearing's model rules for contested cases.
3. Improve the consistency of the rules, both internally and to ensure they properly match Oregon laws and other administrative rules.
4. Improve the clarity of the rules by providing or enhancing definitions.
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CC Rulemaking: Change #1- Optimized Order

345-015-0400 – Governing Provisions

345-015-0403 – Contested Case Notices

345-015-0405 – Appointment and Duties of Hearing Officer

345-015-0410 – Filing and Service

345-015-0415 – Requests for Party or Limited Party Status

345-015-0420 – Petition for Indigent Status

345-015-0425 – Participation by Government Agencies

345-015-0430 – Prehearing Conference and Prehearing Order

345-015-0435 – Suspension of Hearing and Exclusion of a Party

345-015-0440 – Burden of Presenting Evidence

345-015-0445 – Submission of Evidence and Proposed Site Certificate Conditions

345-015-0450 – Official Notice of Evidence

345-015-0455 – Motions

345-015-0460 – Interlocutory Appeals to Council

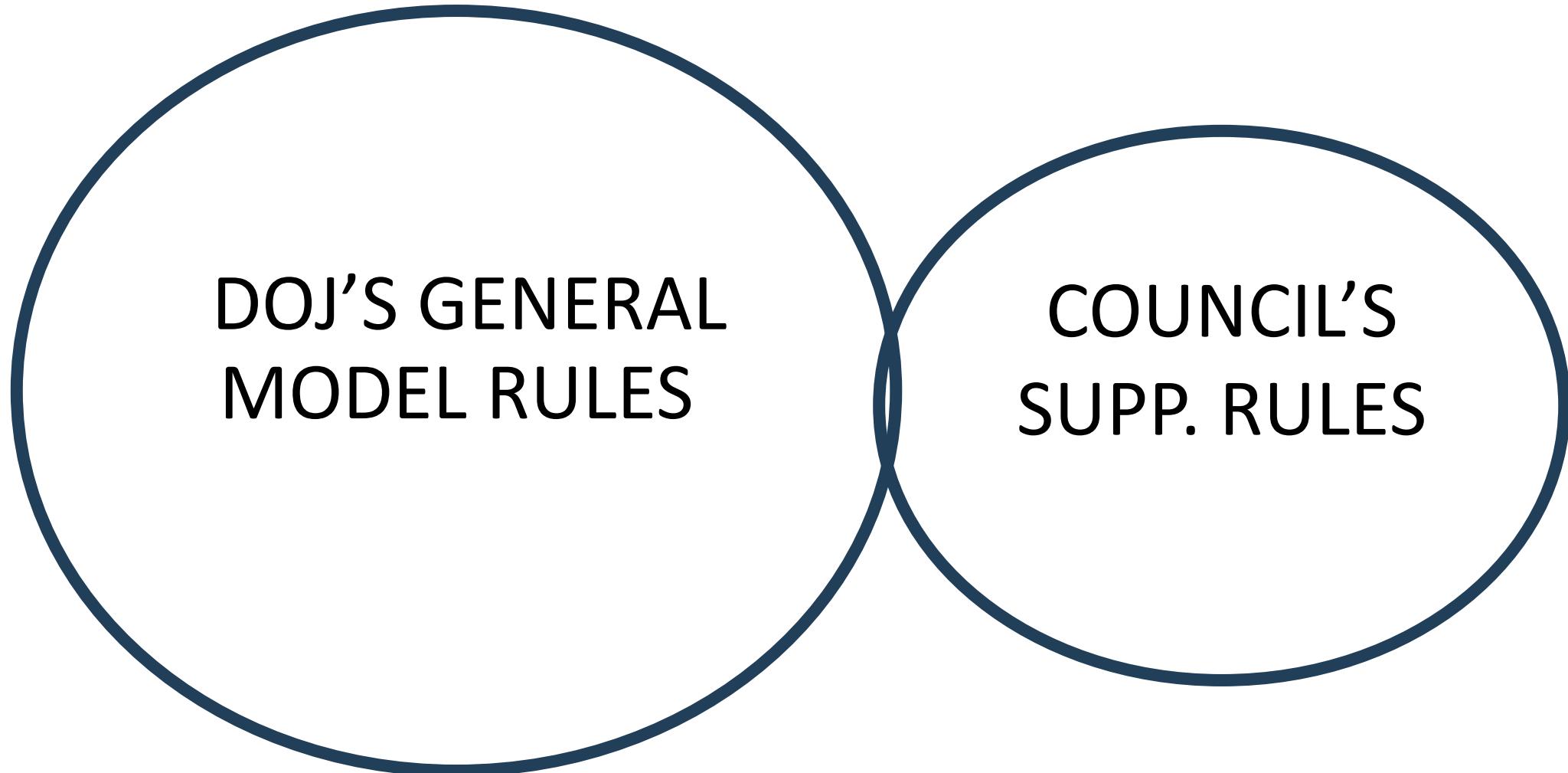
345-015-0465 – Stays

345-015-0470 – Reopening Record Prior to Decision

345-015-0475 – Hearing Officer's Proposed Contested Case Order and Filing Exception

345-015-0480 – Council's Final Order and Issuance of a Site Certificate

CC Rulemaking: Change #2 - Current Setup

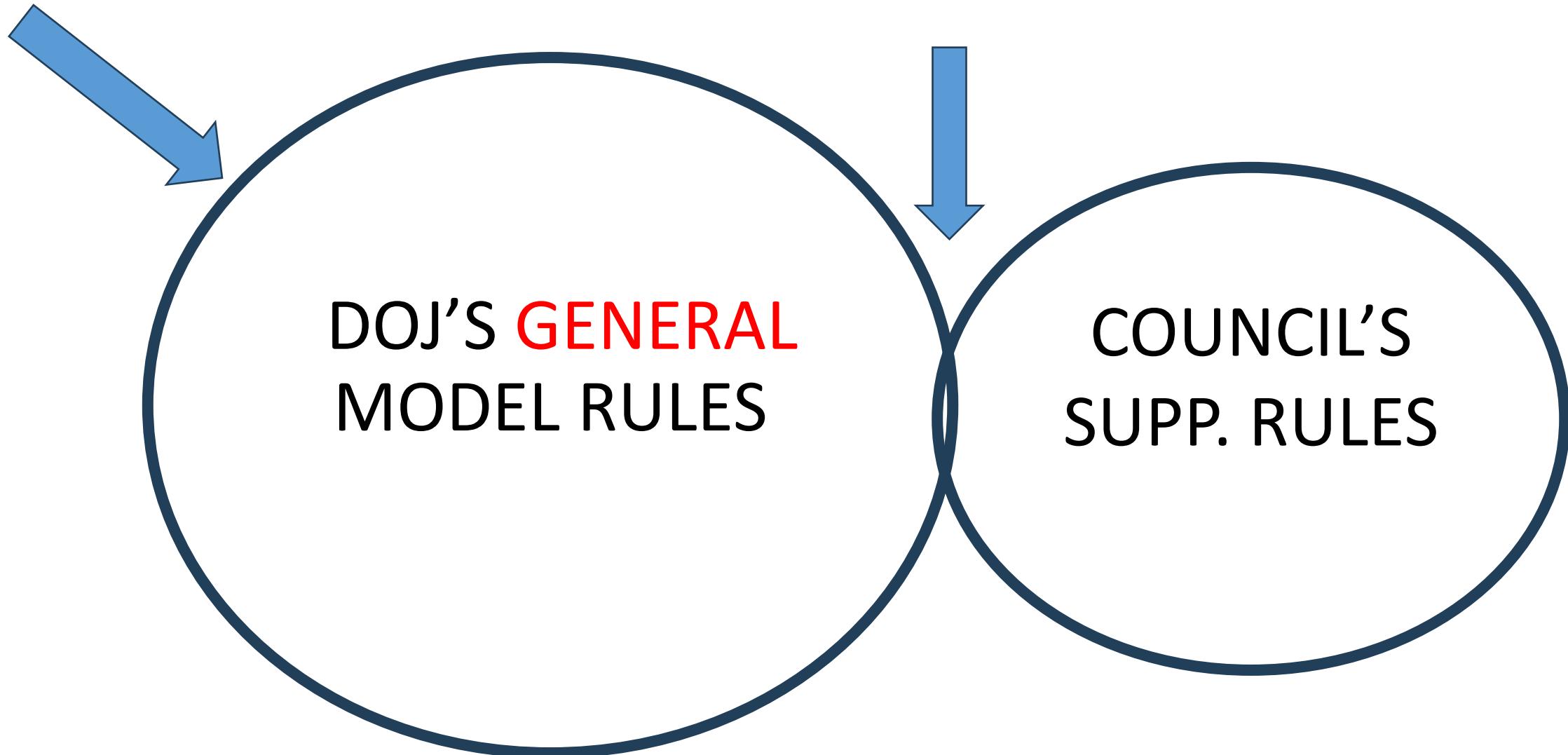


CC Rulemaking: Change #2 – OAH Model Rule Adoption

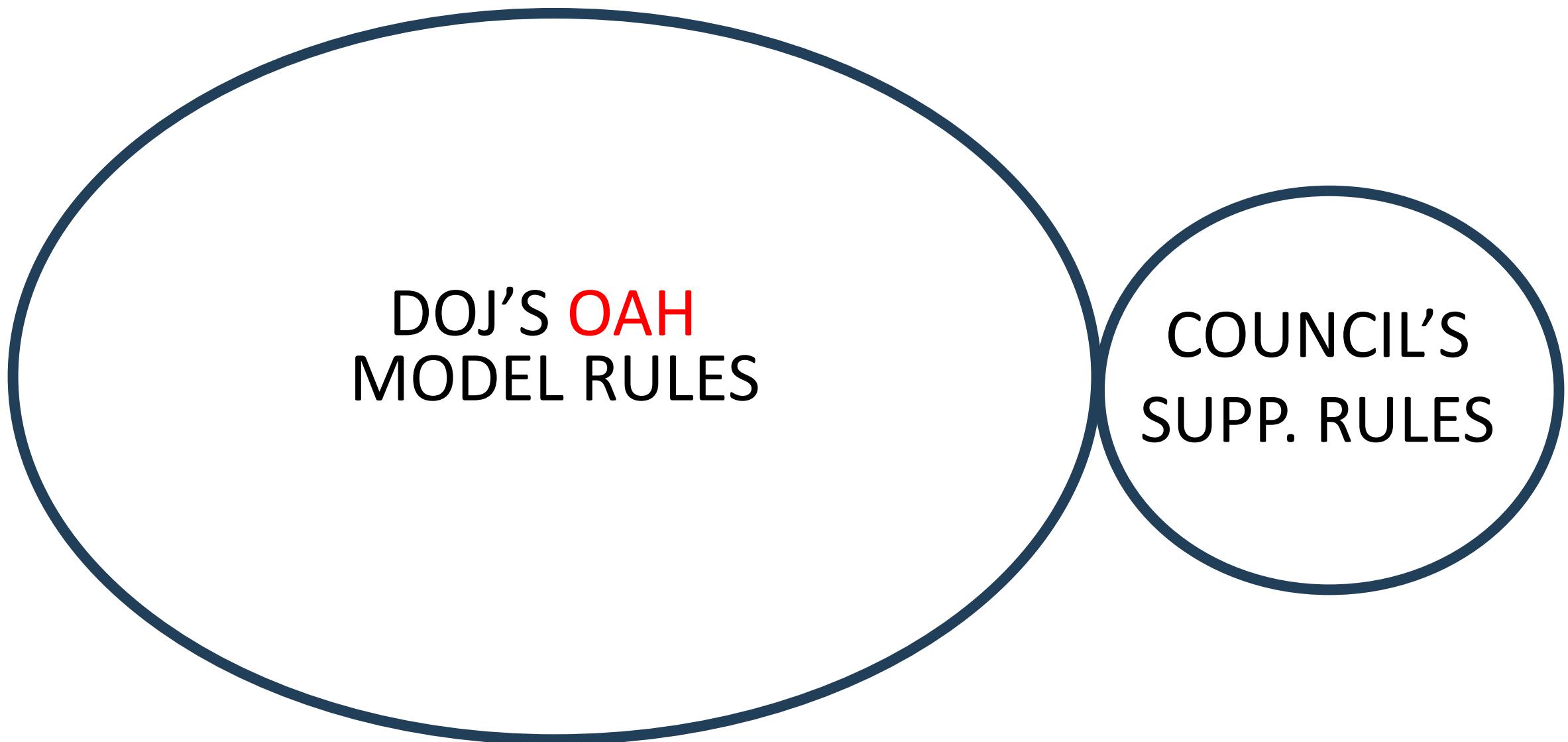
Three Goals

- 1) Improve efficiency by adopting model rules that the OAH ALJ's are more familiar with.
- 2) Increase clarity on issues that the current model rules are silent on, such as: motions for summary determination, appointment of a hearing officer, and several discovery related matters.
- 3) Reduce – if not eliminate – any potentially confusing overlap between model rules and Council's supplementary rules.

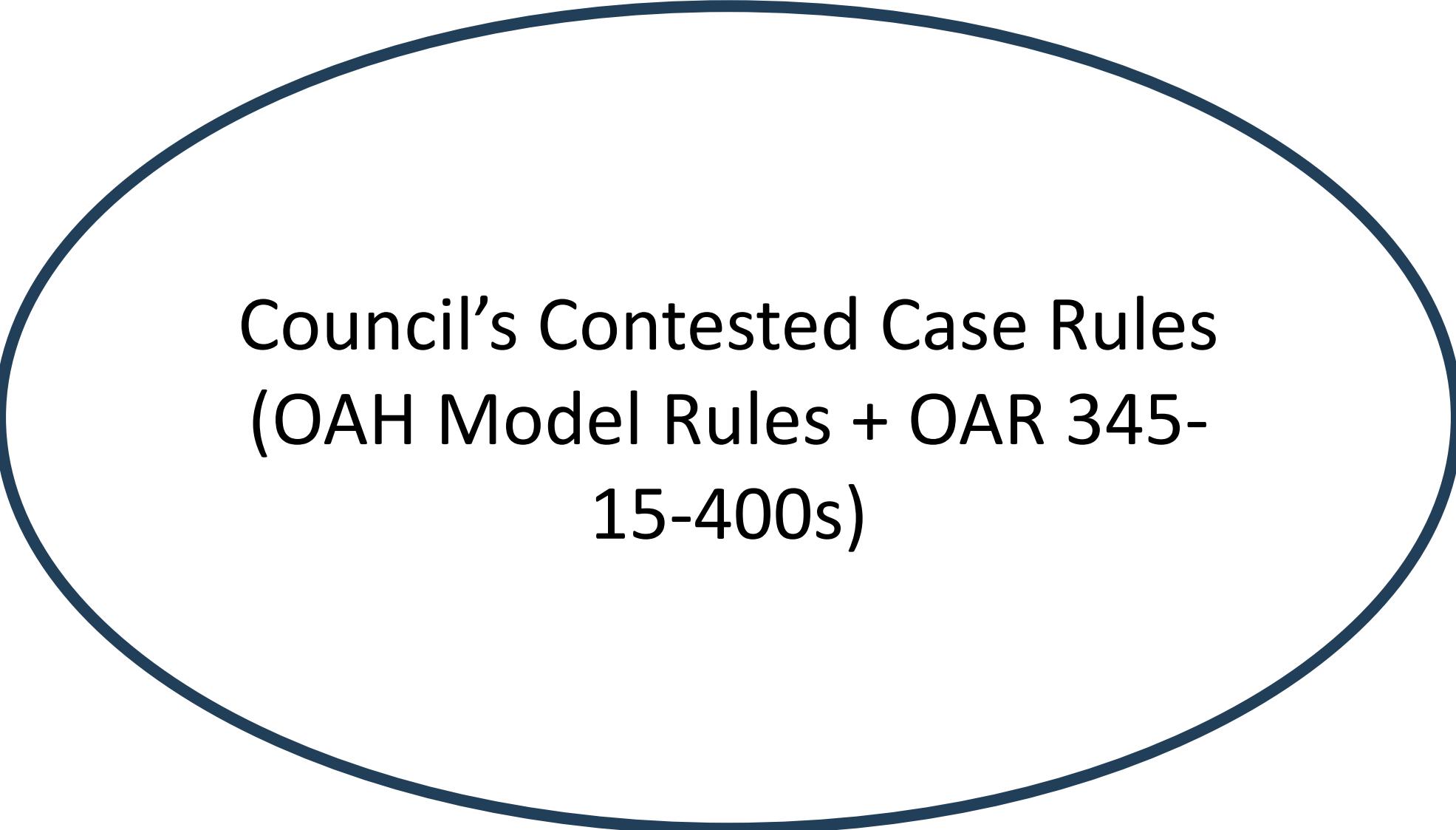
CC Rulemaking: Change #2 - Current Setup



CC Rulemaking: Change #2 – OAH Model Rule Adoption



CC Rulemaking: Change #2 – Website Tool



Council's Contested Case Rules
(OAH Model Rules + OAR 345-
15-400s)

CC Rulemaking: Change #3 – Consistency

- “**Decision maker**” to “**Council, the Department and the applicant**”
 - See OAR 345-015-0415(2), changed to be consistent with ORS 469.370(3), which states that “issues shall be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue.”
- Consistent use of “**hearing officer**,” “**contested case hearing**,” and “**contested case proceeding**”
- “**Proposed order**” to “**proposed contested case order**”
 - More than one order referred to during the CC proceeding – which one is it?

CC Rulemaking: Change #3 – Consistency

- **New Rule 345-015-0440** - Burden of Presenting Evidence
 - Added to be consistent with ORS 183.450(2), which states: "The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position."
- **Change 345-015-0415(4)(b) and (c)** – Comments don't need to be made at the hearing, just while the record is open for public comment.
 - “A reference to the person’s comments *at the public hearing*”
 - “A reference to the person’s comments *on the record of the draft proposed order*”

CC Rulemaking: Change #4 – Clarity

1. What it means to **qualify as indigent**. See OAR 345-015-0420(2).
2. That a **hearing officer has the power to stay a contested case proceeding**. See OAR 345-015-0465(1).
3. That **proposals for new site certificate conditions must be related to issues on which a party has been granted standing**. See OAR 345-015-0445(3).
4. What the **governing provisions** are for contested cases. See OAR 345-015-0400.
5. What is and is not part of a **complete and current record**. See OAR 345-015-0405(3).
6. Evidence submitted by parties must be part of the **schedule established by the Hearing Officer**. See OAR 345-015-0405(4)(b).
7. “other electronic means” → includes **electronic mail**. See OAR 345-015-0410(1).
8. What it means to be **sufficiently specific** at OAR 345-015-0415(3) and (4).

CC Rulemaking: Change #4 – Clarity

9. How **responses to petitioner requests** by department and applicant should take place. See OAR 345-015-0415(5).
10. Better defining **party vs. limited party** status at OAR 345-015-0415(6) (and throughout the rules)
11. How the **prehearing conference** works. See OAR 345-015-0430(1)-(4).
12. Party **status** is set after the prehearing conference(s). See OAR 345-015-0430(3).
13. An **amended order is required if party status is granted** as the result of an appeal of party status. See OAR 345-015-0430(6).
14. How **waiver of an issue** occurs. Current language suggests parties must reraise every issue throughout contested case proceeding to maintain standing. See OAR 345-015-0430(7).
15. Who is allowed to **file responses** to exceptions. See OAR 345-015-475(5).
16. How the Council uses **the exceptions** and the hearing officer's **proposed contested case order** when issuing its **own final order**. See OAR 345-015-480(1)

CC Rulemaking: Change #5 Efficiency

- In OAR 345-015-0415, updating petition to request party status to require:
 - “A short and plain statement **for each issue or issues** that the person desires to raise in the contested case proceeding.”
 - Done to simplify and speed up resolution of issues. Separate statements for each issue makes it easier for a hearing officer and the parties to address each issue.

CC Rulemaking: Change #5 Efficiency

In OAR 345-015-0430(6):

- “The hearing officer’s order on a request to participate as a party or limited party is **final and may not be appealed to Energy Facility Siting Council unless the ruling would terminate the petitioner’s ability to participate in the contested case proceeding.**”
- Immediate resolution of party status disputes appeals to the petitioner, but fails the balancing test given the likelihood that the hearing officer will not be overturned on appeal.
- Siting process must balance need for robust public participation with reasonable expectations on the efficiency of the siting of projects.

CC Rulemaking: Change #5 Efficiency

- Every effort is being made as part of this rulemaking to clarify how best to submit a comment **during the DPO public comment period** such that it will hold up to review by the hearing officer.
- This should reduce likelihood of a need to appeal.
- This is also the most efficient time to address concerns by the public.

CC Rulemaking

Public Comments Included

CC Rulemaking: Public Comments Included

- Changing the first use of “Council” in every rule to “Energy Facility Siting Council” to reduce possible confusion about what is meant by “Council” in the contested case rules.
- Modifying OAR 345-015-0403(4) to clarify that lay representation is allowed when participating in a contested case proceeding. This is in line with ORS 183.457, which states that “No rule adopted by a state agency shall have the effect of precluding lay representation.”
- Adding the following language to OAR 345-015-0415(8): “In ruling on petitions to participate as a party or a limited party, the Hearing Officer shall consider the criteria described in OAR 137-003-0535(8).”

CC Rulemaking: Public Comments Included

- Adding as OAR 345-0403(1): “A statement that persons requesting a contested case should state whether they are requesting to participate in the contested case proceeding as a party or limited party.”
- Modifying the layout of OAR 345-015-0415 to separate out the definition of “sufficient specificity” as its own section: OAR 345-015-0415(4).
- Modifying OAR 345-015-0415, -0430, -0440, -0445, and -0475 to remove references to a hearing officer “granting standing.”

CC Rulemaking: Public Comments Included

- Modifying OAR 345-015-0415(6)(b) to indicate that parties and limited parties to a case should have their issue worded the way they wish it to be worded for the contested case proceedings.
- Adding “Subject to the exceptions in ORS 469.370(5)” to OAR 345-015-0415(3), to make it clear that there are circumstances where a hearing officer may consider an issue in a contested case proceeding that was not raised at the public hearing on the draft proposed order. This includes times where the Department fails to follow proper procedures (ORS 469.370(5)(a)) and where the Department’s proposed order differs materially from the draft proposed order (ORS 469.370(5)(b)).
- Updating the definition of indigent in OAR 345-015-420(2) to change the income level to “at or below 125 percent of the United States poverty level” from “at or below 100 percent.”

CC Rulemaking: Public Comments Included

- Updating OAR 345-015-0405(4)(g) to clarify the circumstances when the hearing officer can limit issues in a contested case. This is to address concerns that the language as previously drafted could be interpreted to give the hearing officer the ability to arbitrarily limit issues.
- Adding “per the schedule and means set forth by the hearing officer” to the end of OAR 345-015-0445(1) to clarify how the schedule is set for the submission of evidence during the contested case proceeding.
- Breaking up OAR 345-015-0475 into two rules (by adding OAR 345-015-0480) due to the material in -0475 exceeding the appropriate scope of the rule title and clarifying in -0480 that the order is the “proposed contested case order.”

CC Rulemaking: Public Comments Included

- Making it clear in OAR 345-015-0475(3) that exceptions to a hearing officer's proposed contested case order are filed with the Council.
- Supplementing for clarity OAR 345-015-0405(1) to state the Council shall appoint a hearing officer "to compile the record of the contested case proceeding" and supplementing 345-015-0405(3) to state the hearing officer shall "maintain a complete and current record of the contested case proceeding, including: . . ."
- Modifying the last sentence of OAR 345-015-0405(1) to remove references to appointing a Council member or department employee as a hearing officer. While the Council is free to appoint whomever it wants as the hearing officer, there is no reason to include the language about appointing a Council member or Department employee, as it is unlikely the Council will ever do so.

CC Rulemaking: Fiscal Impacts

No public comment on fiscal impacts, just various comments on the cost to participate in the contested case generally.

CC Rulemaking

Public Comments Not Included

CC Rulemaking: Public Comments Not Included

Themes

- Feedback came primarily from persons representing the public, particularly those previously involved in the Boardman to Hemingway Contested Case.
- Frustrations about how this rulemaking is “benefiting the developer” by making things “more efficient.”

CC Rulemaking: Public Comments Not Included

Things to Keep In Mind

- 1) Many suggestions from the public were adopted. The rules will be better because of public participation in this rulemaking.

CC Rulemaking: Public Comments Not Included

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- 2) The issues staff had with some of the comments were often a matter of timing. It is not that the public cannot participate in certain ways, it is that the time to participate in the requested manner is earlier in the siting process.

CC Rulemaking: Public Comments Not Included

Things to Keep In Mind

- 1) Many suggestions from the public were adopted. The rules will be better because of public participation in this rulemaking.
- 2) The issues staff had with some of the comments were often a matter of timing. It is not that the public cannot participate in certain ways, it is that the time to participate in the requested manner is earlier in the siting process.
- 3) The most important deadline for public participation in the siting process is the *public comment period of the draft proposed order*. Nothing about this rulemaking can change that.
 - See ORS 469.370(3): “Any issue that may be the basis for a contested case shall be raised **not later than the close of the record at or following the final public hearing prior to issuance of the department’s proposed order**.”

CC Rulemaking: Purpose of a Contested Case

- The purpose of a contested case proceeding is:
 - To generate a clear record of any properly raised disputes, which enables the Supreme Court to review and resolve appeals of the Council's Final Order within the mandatory six-month period stipulated by ORS 469.403(6).
- The purpose of a contested case is not:
 - A collaborative learning opportunity for individuals or organizations who oppose a proposed facility to discover new issues raised by others in an effort to prevent or delay the Council's granting of site certificates.

CC Rulemaking: Public Comments Not Included

Statutory Authority

Concern: This Rulemaking is beyond Council's Authority.

Proposal: Reject majority of rulemaking.

CC Rulemaking: Public Comments Not Included

Statutory Authority

Staff Response: Council has broad authority under ORS 469.470(2) and ORS 469.370(5) to create the rules needed to govern its contested case process:

- ORS 469.470(2) – EFSC has authority to “adopt standards and rules to perform the functions vested by law in the council . . .”
- ORS 469.370(5) (emphasis added) – “Following receipt of the proposed order from the department, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS chapter 183 and ***any procedures adopted by the council.***”

CC Rulemaking: Public Comments Not Included

Ex Parte Communications – OAR 345-001-0005(2)

Concern: Newly adopted rules do not have the requirement for ex parte communications between staff and the Council to be preserved and provided to parties.

Proposal: Modify ex parte communication rules, either by:

- keeping existing applicable model rules; or
- adding additional clarifying language

CC Rulemaking: Public Comments Not Included

Ex Parte Communications – OAR 345-001-0005(2)

Staff Response: The proposed revision of OAR 345-001-0005(2) establishes that the Department will continue the practice of reporting communications between the Department and the Council, even though such communications are not considered “ex parte” under OAR 137-003-0660(1).

CC Rulemaking: Public Comments Not Included

OAH Model Rules – OAR 345-015-0400

Concern: Confused as to why we need to adopt OAH Model Rules, e.g., the ex parte communication issue discussed previously.

Proposal: Keep existing model rules.

CC Rulemaking: Public Comments Not Included

OAH Model Rules – OAR 345-015-0400

Staff Response: As discussed previously, there are several reasons to adopt the OAH model rules, which were not addressed by the commentors. Staff carefully reviewed the coverage provided by the two sets of model rules and how they interact with Council's supplementary rules and feels confident that the switch is the right choice.

CC Rulemaking: Public Comments Not Included

OAH Model Rules – OAR 345-015-0400

“An agency that [is not required to] use an administrative law judge assigned from the Office of Administrative Hearings to conduct contested case hearings for the agency **may choose to adopt any or all** of the Model Rules for Contested Cases in OAR 137-003-0000 to 137-003-0092 **or** in 137-003-0501 to 137-003-0700.” See OAR 137-003-0000(1) (emphasis added).

CC Rulemaking: Public Comments Not Included

Noticing Requirements – OAR 345-015-0403/0415

Concern: Department notice requirements in OAR 137-003-0505, adopted by OAR 345-015-0403, require “[a] short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved.” If this is sufficient to provide notice to the public, then that’s all Council should request of would-be participants in a contested case in OAR 345-015-0415.

Proposal: Modify “sufficient specificity” to match requirement in OAR 137-003-0505.

CC Rulemaking: Public Comments Not Included

Noticing Requirements – OAR 345-015-0403/0415

Staff Response:

OAR 137-003-0505 establishes the requirements for a state agency's contested case notice.

OAR 345-015-0415 establishes the requirements for a person to request to participate in a contested case regarding the Proposed Order, including “a short and plain statement” of the issue(s) the person desires to raise in the contested case proceeding.

CC Rulemaking: Public Comments Not Included

Limited Party Status – OAR 345-015-0415

Concern: Commentors made appeals to fairness, due process, equity, and the practical difficulties of the siting process generally when opposing the limitations on participation as a full party member to the applicant, the Department, and those persons who have raised all issues in a contested case proceeding.

Proposal: Allow any party to a contested case to participate in all issues they are interested in. Some further requested that all petitioners be allowed to respond to all requests for party status, not just the Department and the applicant.

CC Rulemaking: Public Comments Not Included

Limited Party Status – OAR 345-015-0415

Staff Response: The scope of a contested case being set at the time of the Council's proposed order is not something that the Council can freely modify, as this framework is set in statute at ORS 469.370(3):

“Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department’s proposed order.”

CC Rulemaking: Public Comments Not Included

Removal of OAR 137-003-0005(7)

Concern: Ending adoption of OAR 137-003-0005(7), which lays out the criteria for considering party status, conflicts with the Supreme Court holding on the appeal of the Boardman to Hemingway (B2H) project.

See *Stop B2H Coalition v. Dept. of Energy*, 370 Or 792 (2023).

Proposal: Retain original model rule.

CC Rulemaking: Public Comments Not Included

Removal of OAR 137-003-0005(7)

Staff Response: This concern overlooks staff's proposed adoption of OAH model rule OAR 137-003-0535(8), which requires that the hearing officer apply the same factors in determining party status as those found in OAR 137-003-0005(7).

CC Rulemaking: Public Comments Not Included

Proposing Conditions – OAR 345-015-0415(8)

Concern: Several commentors expressed their disagreement with the restriction on who can propose new site conditions, specifically OAR 345-015-0415(8), which states that parties can only suggest new site conditions to the extent they are related to the properly raised issue(s) that enabled their participation in a contested case. STOP discussed how “all participants in the [contested] case have gained new insights and should be afforded the opportunity to recommend conditions.” See STOP’s comments, page 10.

Proposal: Remove any such restrictions.

CC Rulemaking: Public Comments Not Included

Proposing Conditions – OAR 345-015-0415(8)

Staff Response: Staff notes that proposed OAR 345-015-0445(3) does allow all parties to a contested case to comment on any material changes to site certificate conditions that are proposed during the contested case process, as they may also do if Council's subsequent review results in material changes. See ORS 469.370(7).

Staff recommends rejecting this proposal as it represents an improper extension of the public comment period for the draft proposed order.

CC Rulemaking: Public Comments Not Included

Interlocutory Appeal – OAR 345-015-0430(4)/0460(1) ➔

Concern: Several commentors disagreed with the removal of OAR 345-015-0016(6) (allowing for some appeal opportunities) and adoption of 345-015-0430(4) and 345-015-0460(1) (disallowing appeals unless you are denied on all issues). The basis of the arguments is that it is not fair, and it is inefficient to make people wait to appeal the hearing officer's finding.

Proposal: Grant interlocutory appeal to Council on any denied issue, even if an individual is otherwise allowed to participate in the contested case proceeding.

CC Rulemaking: Public Comments Not Included

Interlocutory Appeal – OAR 345-015-0430(4)/0460(1)

Staff Response: This position is inconsistent with statute, which states that judicial review of party status does not happen until after the agency issues its final order. As described in ORS 183.310(7)(c) (emphasis added):

“The agency’s determination [of party or limited party status] is subject to judicial review in the manner provided by ORS 183.482 (Jurisdiction for review of contested cases) **after the agency has issued its final order in the proceedings.**”

CC Rulemaking: Public Comments Not Included

Legal Aid

Concern: Participation in a contested case is a challenge without expensive legal representation.

Proposal: Public funding should be made available to those who wish to participate in a contested case proceeding.

Staff Response: The Council lacks the authority to provide any public funding for contested case participants. The appropriate avenue for this concern is for interested parties to reach out to their respective state representatives to raise this concern and for the Oregon legislature to appropriate money and give it to the Council for this purpose.

CC Rulemaking: Public Comments Not Included

Timing and Council Review

Concern: The Council is given insufficient time to review comments during the public comment period on the draft proposed order.

Proposal: Create rule which would grant Council more time to review public comments.

Staff Response: It is Council's authority on when to review the draft proposed order following the public comment deadline.

CC Rulemaking: Public Comments Not Included

Naming Conventions

Concern: Naming of documents can be confusing.

Proposal: Create a naming convention in rules for any contested case related documents.

Staff Response: This can be worked out by the parties and the hearing officer as part of the pre-hearing conference. Staff can explore creating a suggested format and putting it on the Council's website, but sees no need to create a file format via the rules.

CC Rulemaking: Public Comments Not Included

Docket System

Concern: Service and organization of documents can be tricky, especially with larger contested cases like B2H.

Proposal: Create a docket or require OAH to create one for us.

Staff Response: Neither the Department nor the Council have the authority to mandate that OAH establish a docketing system and make it available to the public. The Council has relatively few contested cases and B2H was an anomaly.

CC Rulemaking: Public Comments Not Included

Denial of Contested Case - Orders

Concern: EFSC does not issue an order when it denies a request for contested case.

Proposal: Create rule mandating creation of orders for denial of a request to participate in a contested case proceeding.

Staff Response: This issuing of orders in the event there is a denial of a contested case is already taking place and staff sees no reason to recommend that Council modify the rules on this point.

CC Rulemaking: Public Comments Not Included

Special Advisory Groups – OAR 345-015-0425(1)

Concern: Special Advisory Groups (“SAGs”) should not be required to repeat comments made during the draft proposed order (DPO) when requesting a contested case.

Proposal: Allow SAGs to participate in a contested case proceeding without making them identify their comments from the DPO.

Staff Response: If a SAG does not submit a request for a contested case containing a description of the issue they are concerned about and identify the comments they made on the record regarding the issue, how are the hearing officer and the parties to the contested case going to know how and to what extent the SAG wishes to participate in the contested case?

Council Options

Option 1 - Recommended

Approve reissuing NOPR with proposed rules

Option 2

Approve reissuing NOPR with amended rules

Option 3

Approve the Rules as proposed without reissuing NOPR

Option 4

Approve the Rules as proposed, with changes, without reissuing NOPR



OREGON
DEPARTMENT OF
ENERGY

Council Deliberation

WORKING LUNCH BREAK

ADJOURN

