

Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

ODOE Office
550 Capitol St NE
Salem Or

December 13, 2024



Opening Items:

- Call to Order
- Roll Call
- Announcements

Announcements:

- Reminder to Council and to anyone addressing the Council to please remember to state your full name clearly, and no not use the speakerphone feature, as it will create feedback.
- You may sign up for email notices by clicking the link on the agenda or the Council webpage.
- You are also welcome to access the online mapping tool and any documents by visiting our website.

Announcements continued:

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

Agenda Item A (Action Item & Information Item)

Consent Calendar

- October Council Meeting Minutes
- November Council Meeting Minutes
- Council Secretary Report

December 13, 2024

Agenda Item B (Action Item)

Land Conservation and Development Commission's Eastern Oregon Solar Siting Possibilities Rulemaking

Tom Jackman, Rules Coordinator

December 13, 2024

Council Oversight of Related Rulemaking

ORS 469.320

Each state agency proposing to adopt, amend or rescind a rule:

- relating to energy facility development
- first shall file a copy of its proposal with the council
- which **may order such changes as it considers necessary** to conform to state policy as stated in ORS 469.010 and 469.310.

Promotion of Sustainable Energy

ORS 469.010(a)

That **development** and use of a diverse array of **permanently sustainable energy resources** be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.



Protection of the Public and Environment

ORS 469.310



In the interests of the public health and the welfare of the people of this state . . . siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the **public health and safety** and in compliance with the energy policy and **air, water, solid waste, land use and other environmental protection policies** of this state.

HB 3409 Passed in 2023

Directs the Land Conservation and Development Commission (LCDC) to adopt rules allowing local governments to consider a photovoltaic solar power generation facility as **a rural industrial use** to justify an **exception** under Oregon Revised Statute (ORS) 197.732 (2)(c)(A).



By July 1, 2025

Establishing criteria through which local governments may **be permitted or required** to allow the siting of a photovoltaic solar power generation facility, including criteria that consider (among other things):

- Potential conflicts with other resource lands; and
- Identifying the characteristics of lands in Eastern Oregon, as defined in ORS 321.700, best suited for counties to allow, encourage and incentivize photovoltaic solar power generation facilities, based on consideration of:

By July 1, 2025

Criteria Continued:

- The land's suitability for contributing to the state's clean energy goals;
- Site characteristics, resource potential, proximity to current and future transmission access and locations for potential interconnection; and
- The ability to readily avoid negative impacts on natural resources, forestry, habitat, agriculture, community needs and historic, cultural or archeological resources, or to readily minimize or mitigate those negative impacts.

Rulemaking Has Created Two Pathways

- Counties can decide on a pathway and update their comprehensive plans with a post acknowledgement plan amendment.
 - **Option 1:** A county can **review individual applications for solar sites** using the adopted administrative rules directly. Counties could approve such facilities up to 120 acres of high value farmland, 1,280 acres of arable farmland, and 1,920 acres of non-arable, lower quality farmland. (Pseudo EFSC Process)
 - **Option 2:** A county could adopt a program into their comprehensive plans to **designate specific areas** within the county for solar development, consistent with the adopted administrative rules and with more flexibility for the county to tailor implementation of the rules to specific county conditions. Under such a program, counties could approve such facilities on up to 240 acres of high value farmland, 2,560 acres of arable farmland, and 3,840 acres of non-arable, lower quality farmland. (Least Conflict Zoning)

Issues Remain

- Community Benefits
 - DLCD staff have identified several potential safe harbor community benefit measures while providing flexibility in the rules to allow counties or developers to propose unique community benefits agreements of their own
- Mapping
 - DLCD staff are working to get an overall map of Eastern Oregon and individual county level maps that will show a rough estimate of how much land the rules will make available for solar photovoltaic energy generation projects. Based on how this map is received, the RAC may adjust some of the standards in the proposed rule language.

Issues Remain

- Cultural Resources
 - Still unknown how the proposed rules will address cultural, historical and archaeological resources, known and currently unknown, as well as communication and collaboration with the Federally Recognized Tribes in Oregon.
- Urban Growth Boundary
 - Whether to allow or prohibit new photovoltaic solar development within one mile of an urban growth boundary.
 - Developers: Allow!
 - Staff: Allowing large energy developments on these lands close to urban areas could impede where new urban development, included needed housing, can be constructed.

Two More RAC Meetings

- If things change, we will make new recommendations
- Regardless, we will be sharing the final proposed language with the Council for their consideration
- Current schedule has final* RAC on January 9, 2025.



Council Options

Option 1 - Recommended

Determine LCDC rules as currently proposed are consistent with ORS 469.010 and 469.310

Option 2

Determine LCDC rules as currently proposed are not consistent with ORS 469.010 and 469.310 and order specified changes

Council Deliberation

BREAK

Agenda Item C (Information Item)

Land Use Standard: Goal 3 Exception Overview

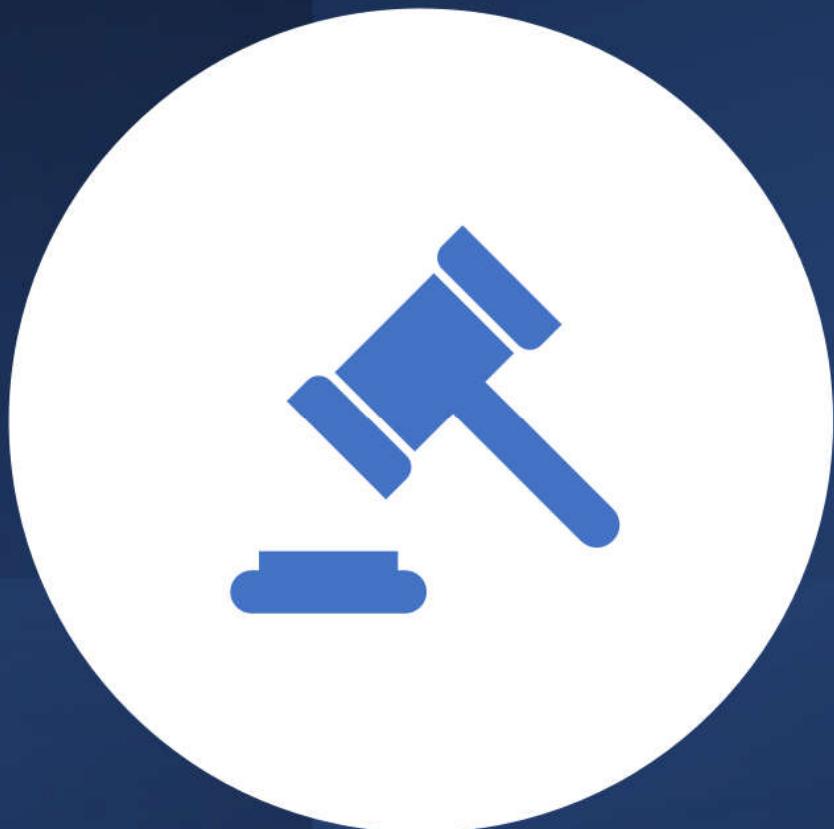
**Patrick Rowe, Oregon Department of Justice Senior Assistant Attorney
General and Counsel to EFSC**

December 13, 2024



Overview of *Goal 3 & Goal Exceptions*

Patrick Rowe
Senior Assistant Attorney General
December 13, 2024 EFSC Meeting



Oregon Statewide Planning Goals



The foundation of land use planning in Oregon is a set of 19 Statewide Land Use Planning Goals.



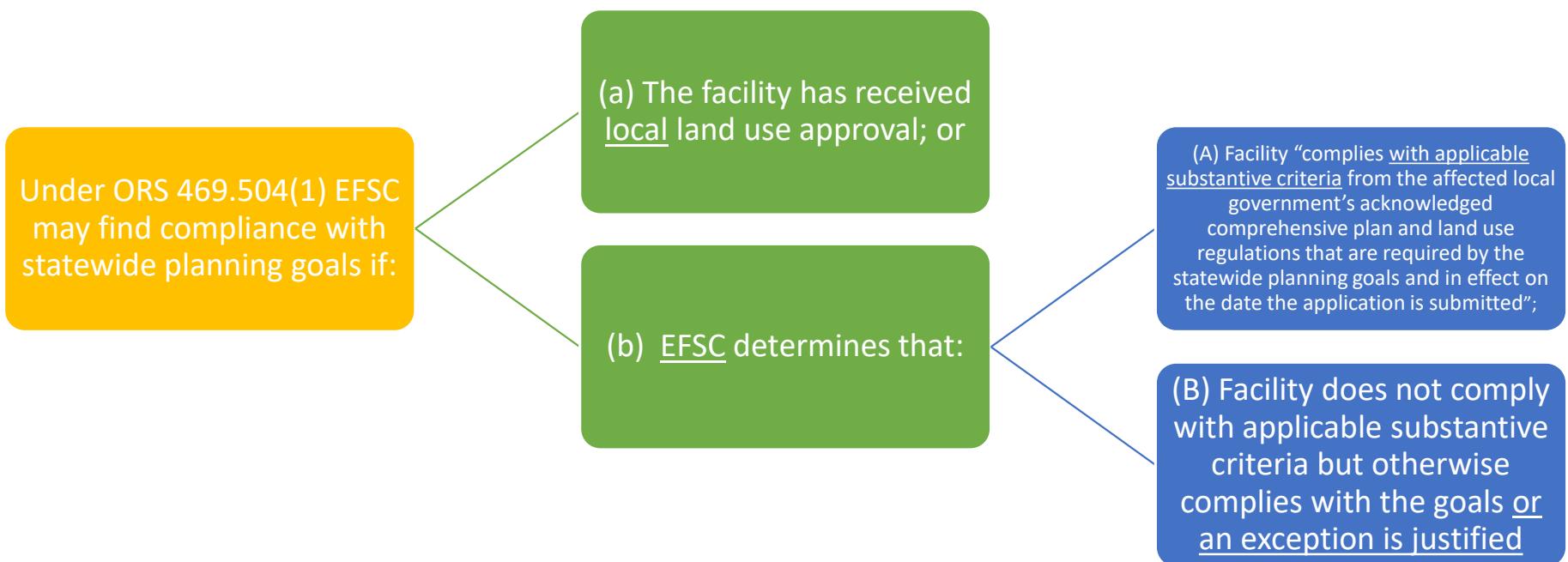
The goals express the state's policies on land use and related topics, like citizen involvement, housing, and natural resources.



EFSC Land Use Standard

- Pursuant to state statute (ORS 469.503(3)) and Council's Land Use standard (OAR 345-022-0030), to issue a site certificate, Council must find that a proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission (LCDC).

Ways to find compliance with Statewide Goals



Goal 3 – Agricultural Land

- Purpose of Goal 3 is to preserve and maintain agricultural lands for farm use.
- Goal 3 requires counties to identify farmland, designate it as such on the comprehensive plan map, and zone it exclusive farm use (EFU).
- An EFU zone places restrictions on developments that are unrelated to agriculture in order to minimize uses that conflict with farming.



Restrictions on Solar PV facilities

LCDC rule prohibits a solar pv facility from using, occupying or covering more than 12 acres of high value farmland, unless certain criteria are satisfied, or

the County or EFSC grants an exception to the goal.

Exceptions

ORS 197.732(2): Local governments may provide an exception if:

- (a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;
- (b) The land subject to the exception is irrevocably committed as described by LCDC rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or
- (c) The following standards are met:
 - (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
 - (B) Areas that do not require a new exception cannot reasonably accommodate the use;
 - (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
 - (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

ORS 469.504(2) EFSC may provide an exception if:

- (a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;
- (b) The land subject to the exception is irrevocably committed as described by LCDC rules to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or
- (c) The following standards are met:
 - (A) Reasons justify why the state policy embodied in the applicable goal should not apply;
 - (B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and
 - (C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

Save our Rural Oregon v. EFSC Oregon Supreme Court 2005

- Proposed 1150 MW natural gas energy facility in Klamath County.
- Klamath County Land Development Code ordinance implementing Goal 3 provided that a commercial energy facility may use a maximum of 12 acres of high-value farmland or 20 acres of non-high-value farmland before a goal exception is required.
- The proposed facility would use 50.6 acres of land zoned for Exclusive Farm Use.
- EFSC granted a site certificate, determining that an exception to Goal 3 was warranted for the following reasons:
 - * proposed facility at the confluence of three unique and essential resources (a stable groundwater well, an existing natural gas pipeline, and an existing electric transmission line and substation);
 - * would support the existing electrical transmission system, which was “in critical need of more capacity”;
 - * it would benefit the local economy through employment opportunities and contributions to the local tax base; and
 - * it would conserve farmland over the long run by concentrating electrical generation facilities into one larger compact facility rather than several smaller facilities that would occupy more total acreage.

Save our Rural Oregon
v. EFSC
Oregon Supreme Court 2005

"A comparison of the two statutes makes clear that the legislature used ORS 197.132(2)(c) as the basis for the later enacted ORS 469.504(2)(c) but omitted the requirement of an alternatives analysis. We therefore conclude that the legislature did not intend to require the council to perform an alternatives analysis in making a determination under ORS 469.504(2) that an exception could be taken to a land use planning goal."





Save our Rural Oregon v. EFSC Oregon Supreme Court 2005

“The evidence also showed that the proximity of the site to an existing natural gas pipeline and to the major north-south electricity transmission line on the West Coast (as well as a substation on that line) *made the site particularly suited* for a gas-powered electricity generation facility. Other evidence showed that the facility needed a site of 50.6 acres. *Each of the council's findings regarding the Goal 3 exceptions is supported by substantial evidence in the record.*”

*1000 Friends of Oregon v.
Jackson County*
Oregon Court of Appeals (2018)

- Addressed the LCDC rule that prohibits a solar pv facility from using, occupying or covering more than 12 acres of high value farmland, unless certain criteria are satisfied or an exception granted.
- Developer proposed a solar p.v. facility on 80 acres of high-value farmland.
- Jackson County Board of Commissioners approved the application, based on a “reasons” exception to Goal 3, including: a demonstrated need for the facility and locational necessity (OAR 660-004-0022(1)(a)).



1000 Friends v. Jackson County Demonstrated need/Goal 13 finding

County Board found demonstrated need based on the requirements of Statewide Planning
Goal 13 – Energy Conservation:

“Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.”

County Board finding:

“Goal 13, in the context of the policies set forth in the State's energy policy, as well as federal and state statutes, establish a general requirement to utilize renewable resources, including the in-State siting of renewable energy production facilities such as the proposed project, and therefore establishes a 'demonstrated need' as required under OAR 660-004-0022(1)(a).”

1000 Friends v. Jackson County Court of Appeals decision

*Neither the text of the goal [13] nor its guidelines “require” the county to develop or facilitate the development of any particular land use, much less large solar power generation facilities. Instead, Goal 13 requires that all development on land be “managed and controlled” **to conserve energy**. The text of the goal and its guidelines **do not directly or indirectly require the development of energy facilities**.*

* * *

The exception was to justify an energy facility of a particular size, and Goal 13 has no bearing on that justification.

Council Reasons For Goal 3 Exceptions

- **No or Minimal Impacts to Agriculture**

- No or minimal impacts to farming practices/uses at the proposed solar facility site
 - Evaluate direct impacts: e.g., how much land will the facility displace, is it being actively farmed, could it be farmed, etc.
 - Evaluate indirect impacts: e.g., to total farming operation, impacts agricultural output, jobs, etc.
- No or minimal impacts to surrounding agricultural lands / area ag economy
 - Evaluate impacts of proposed facility on farm practices in the area
 - E.g., dust control, noxious weeds, animal migration and
 - Economic impacts: e.g., to ag sector suppliers and service providers, employment, etc.

Council Reasons for Goal 3 Exceptions

Locational Dependence

- Proximity to Transmission / Existing Energy Infrastructure
- Proximity to Major Transportation Corridors

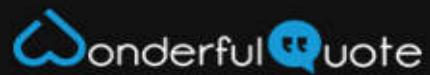
Council Reasons for Goal 3 Exceptions

Local Economic Benefits / Benefits to Local Ag Economy

- In recent years, Council has shifted from accepting general local economic benefits, to requiring evidence of benefits to the local agricultural economy.
 - Local Government: will increased taxes benefit agricultural economy specifically?
 - Mitigation Funds: if applicant is setting up a local fund, how will it benefit the agricultural economy? Will its benefits exceed the facility's impacts to ag?

**The power to
question is the basis
of all human
progress.**

Indira Gandhi



Agenda Item D (Information Item)

PUBLIC COMMENT

Items Closed for Public Comment

- Mist Underground Natural Gas Storage Facility, Amendment #13 Draft Proposed Order
- Madras Solar Energy Facility, Amendment #1 Draft Proposed Order

Time Limit – 7 Minutes per commentor

How to Raise Your Hand in Webex:

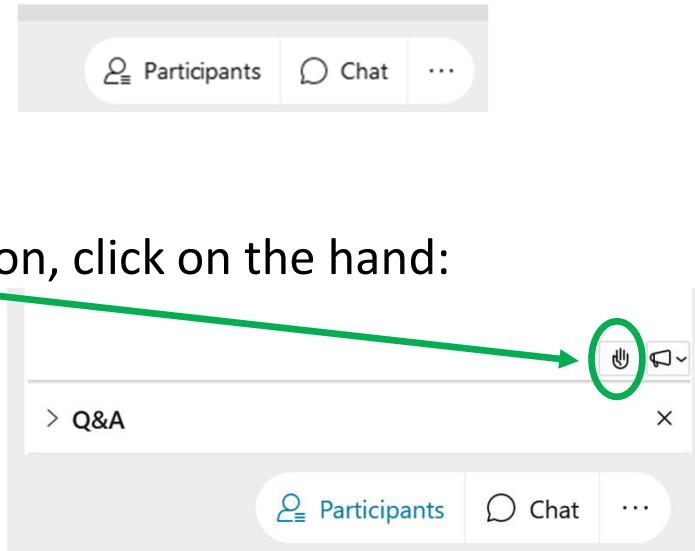
Webinar Participants

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.

Agenda Item E (Action Item)

Initiation of Rulemaking Alignment Phase 2

Tom Jackman, Rulemaking Coordinator

December 13, 2024

Background - Rulemaking Process



Why No RAC?

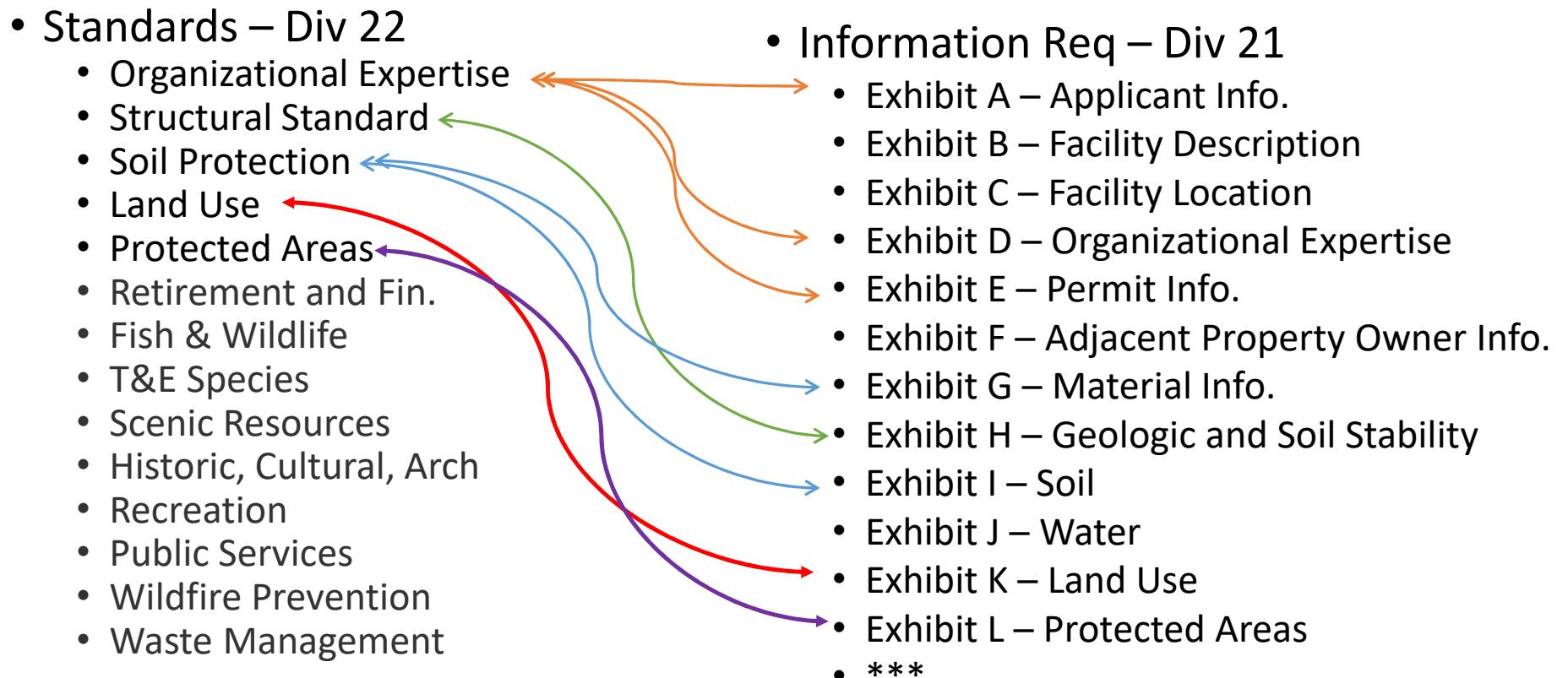
- Early Internal Drafting Narrowed Scope
- Scope Got Narrowed to Primarily Non-Substantive Edits
- Not worth the time for RAC to meet solely for discussion on organization
- Let's get to Phase 3!
- Everyone with thoughts and feelings can provide them during the public comment period or at a hearing
- Council can of course find after review today that we do in fact need a RAC

Why Are We Here?

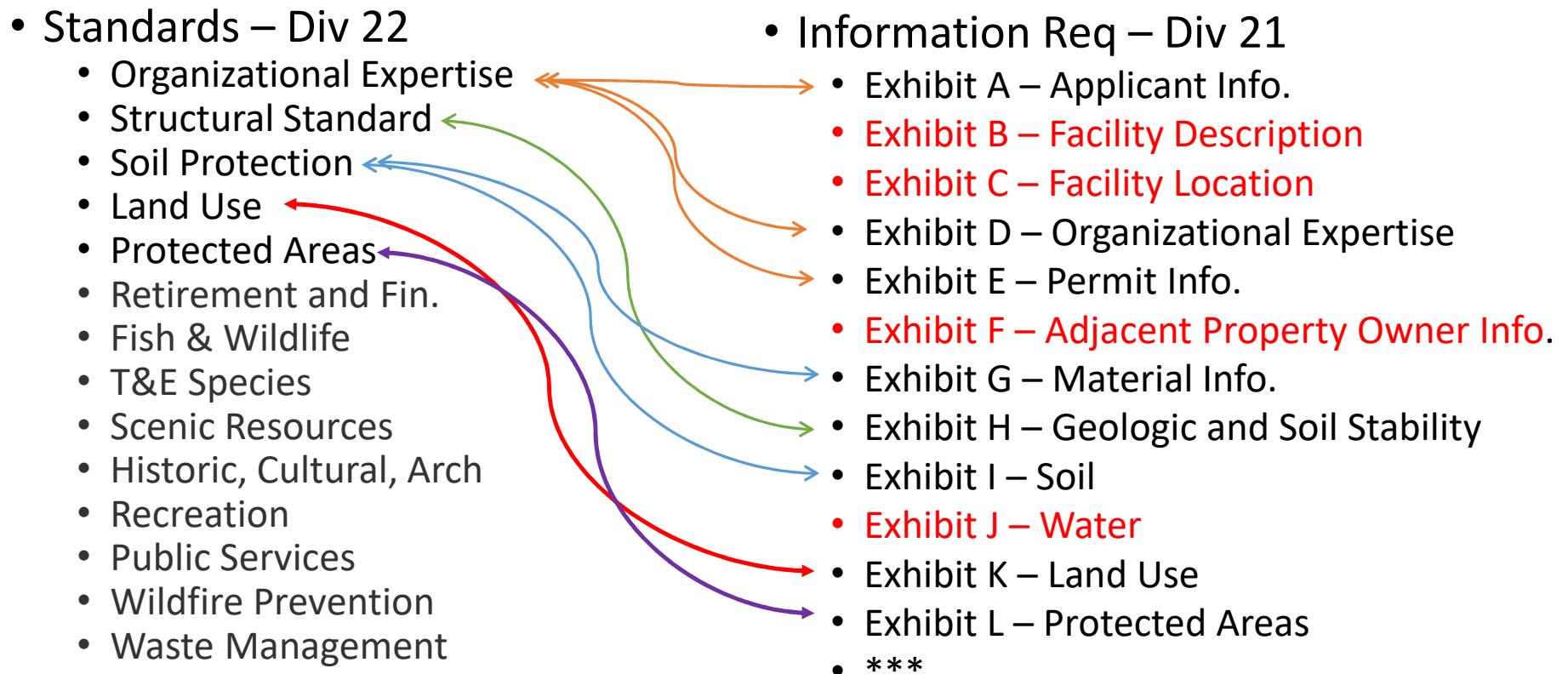
Rules Now Divide Standards & Info. Req.

- Standards – Div 22
 - Organizational Expertise
 - Structural Standard
 - Soil Protection
 - Land Use
 - Protected Areas
 - Retirement and Fin.
 - Fish & Wildlife
 - T&E Species
 - Scenic Resources
 - Historic, Cultural, Arch
 - Recreation
 - Public Services
 - Wildlife Prevention
 - Waste Management
- Information Req – Div 21
 - Exhibit A – Applicant Info.
 - Exhibit B – Facility Description
 - Exhibit C – Facility Location
 - Exhibit D – Organizational Expertise
 - Exhibit E – Permit Info.
 - Exhibit F – Adjacent Property Owner Info.
 - Exhibit G – Material Info.
 - Exhibit H – Geologic and Soil Stability
 - Exhibit I – Soil
 - Exhibit J – Water
 - Exhibit K – Land Use
 - Exhibit L – Protected Areas
 - ***

Clear as Mud



Not All Exhibits Directly Tied to Standards



Key Issues With Current Rules

- Not all exhibits are connected to a Council standard
 - This rulemaking addresses this head on by identifying what information is relevant for the various standards
- It can be confusing where information related to a standard is spread across parts of exhibits as well as found in multiple exhibits
 - We should make it clear what information is for which standard
 - We address this in part by combining exhibits into one exhibit where possible
 - This will be more fully addressed when we review standards in Phase 3
- Rules can better explain where the same information is required for multiple standards (e.g., where same information is related to scenic and recreational areas)
 - Did part of this with duplicating (verbatim to make it clear the information is shared) the materials analysis
 - Will more fully address this in Phase 3

Moved Div 21 Info Req. to Div 22

- Organizational Expertise
 - Exhibits A, D, E
- Structural Standard
 - Exhibit H
- Soil Protection
 - Exhibits G & I
- Land Use
 - Exhibit K
- Protected Areas
 - Exhibit L
- Retirement and Fin.
 - Exhibit M
- Fish & Wildlife
 - Exhibit P
- T&E Species
 - Exhibit Q
- Scenic Resources
 - Exhibit R
- Historic, Cultural, Arch
 - Exhibit S
- Recreation
 - Exhibit T
- Public Services
 - Exhibit U
- Wildlife Prevention
 - Exhibit V
- Waste Management
 - Exhibit W

Exhibit Letters Gone

- Organizational Expertise
 - Organizational Expertise Exhibit
- Structural Standard
 - Structural Standard Exhibit
- Soil Protection
 - Soil Protection Exhibit
- Land Use
 - Land Use Exhibit
- Protected Areas
 - Protected Areas Exhibit
- Retirement and Fin.
 - Retirement Exhibit
- Fish & Wildlife
 - Fish & Wildlife Exhibit
- T&E Species
 - T&E Species Exhibit
- Scenic Resources
 - Scenic Resources Exhibit
- Historic, Cultural, Arch
 - Historic, Cultural, Arch Exhibit
- Recreational Areas
 - Recreational Areas Exhibit
- Public Services
 - Public Services Exhibit
- Wildlife Prevention
 - Wildlife Prevention Exhibit
- Waste Management
 - Waste Management Exhibit

That's Pretty Much It

Now Ready For Phase 3

Council Options

Option 1 - Recommended

Initiate rulemaking as presented and recommended by staff

Option 2

Initiate rulemaking as presented and recommended by staff, with specified changes

Option 3

Do not initiate rulemaking as presented and recommended by staff, for specified reasons

Council Deliberation

Agenda Item F (Action Item)

Annual Financial Assurance Evaluation

Sisily Fleming, Fiscal Analyst

December 13, 2024

Annual Financial Assurance Evaluation

Letter of Credit and Bond Templates

- Council last approved templates in November 2023 for use in 2024
- No changes proposed from previously approved templates

Annual Financial Assurance Evaluation

2025 Proposed Financial Institutions	S&P		Moody's		Fitch		AM Best	
Letter of Credit	Rating	Outlook	Rating	Outlook	Rating	Outlook	Rating	Outlook
Banco Santander S.A. (New York Branch)	A+	Stable	A2	Positive	A-	Stable		
Bank of America N.A.	A+	Stable	A1	Stable	AA	Stable		
Bank of Nova Scotia (NY Agency)			A2	Stable	AA-	Stable		
Bank of the West (Bank of Montreal)			A2	Stable	AA-	Stable		
Barclay's Bank, PLC (NY Branch)			A1	Stable	A+	Stable		
Citibank, N.A.	A+	Stable	Aa3	Stable	A+	Stable		
CoBank	AA-	Stable			A+	Stable		
Deutsche Bank	A	Stable	A1	Stable	A-	Stable		
Helaba (NY Branch of Landesbank Hessen-Thueringen GZ)			Aa2	Stable	A+	Stable		
JP Morgan/Chase Bank, N.A.	AA-	Stable	A1	Positive	AA	Stable		
Mizuho Bank	A	Stable	A1	Stable	A	Stable		
MUFG Bank, Ltd. (Union Bank)	A	Stable	A1	Stable	A	Stable		
Natixis (NY Branch)	A+	Stable	Aa3	Stable	A	Stable		
Royal Bank of Canada (NY Branch)	AA-	Stable	Aa1	Stable	AA-	Stable		
Royal Bank of Scotland International Ltd	A	Stable	Aa3	Stable	A	Positive		
US Bank, N.A.	A+	Stable	A3	Negative	A+	Stable		
Wells Fargo Bank, N.A.	A+	Stable	Aa1	Negative	AA-	Stable		
Sumitomo Mitsui Banking Corporation (SMBC, NY Branch)	A	Stable	A1	Stable	A	Stable		
Bond	Rating	Outlook	Rating	Outlook	Rating	Outlook	Rating	Outlook
Arch Insurance Company			A2	Stable	AA-	Stable	A+	Stable
CNA Financial Corporation			Baa2	Positive	A-	Stable	bbb+	Stable
Continental Casualty Company			A2	Positive	A+	Stable	A	Stable
Federal Insurance Co			Aa2	Stable	AA	Stable	A++	Stable
Fidelity & Deposit Co of MD							A	Stable
Hanover Insurance Group			Baa2	Stable			bbb+	Stable
Liberty Mutual Insurance Company			A2	Stable			bbb	Stable
SAFECO Insurance Co of America			A2	Stable			A	Stable
Travelers Casualty & Surety Co of America			Aa2	Stable	AA	Stable	a+	Stable
Westchester Fire Insurance Co			Aa2	Stable	AA	Stable	A++	Stable

Council Options

Option 1 - Recommended

Approve the templates and financial institutions as presented and recommended

Option 2

Approve the templates and financial institutions as presented and recommended, with specified changes

Council Deliberation

WORKING LUNCH BREAK

Agenda Item G (Action Item)

Biennial Fee Update

Sisily Fleming, Fiscal Analyst

December 13, 2024

Biennial Fee Update

NOTICE OF INTENT (NOI)		2023-24 Fee
OPTION A: Customized NOI Approach (Applies to all Facility Types)		
Initial Filing Fee	\$6,000	\$6,000
Custom NOI Fee (Based on Cost Estimate)	not less than \$44,000	...\$42,000
OPTION B: Standard NOI Approach		
Natural Gas Fired Generation (CCR Only)	\$70,000	\$67,000
BioFuels	\$83,000	\$79,000
Electrical/Pipeline Transmission	\$0	\$152,000
<i>Electrical / Pipeline Transmission > 50 Miles</i>	\$159,000	\$0
<i>Electrical / Pipeline Transmission < 50 Miles</i>	\$79,500	\$0
Wind, Solar, Geothermal, & All Other Generation	\$44,000	\$42,000

Council Options

Option 1 - Recommended

Approve the proposed Fee Schedule for 2025-2026 as presented and recommended

Option 2

Approve the proposed Fee Schedule for 2025-2026 as present and recommended, with specified changes

Council Deliberation

Agenda Item H (Action Item)

2025 Annual Election of Officers

Todd Cornett, Council Secretary

December 13, 2024

OAR 345-011-0010(1)

- The Council shall annually elect a chair and a vice-chair.
- The chair and vice-chair shall serve for one year or until their successors are elected.
- A member may serve successive full terms as chair or vice-chair.

Council Deliberation

ADJOURN

