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To: Energy Facility Siting Council

From: Sarah Esterson, Senior Policy Advisor

Date: January 3, 2025

Subject: Agenda Item F (Information Item): Council Review of the Fish and Wildlife Habitat Standard ([OAR 345-022-0060](#)) for the January 17, 2025 EFSC Meeting

PURPOSE STATEMENT

The goal of this agenda item is to provide an overview of the Fish and Wildlife Habitat standard; inform the Council of the process and challenges of regulating Habitat Mitigation Plans (HMP); and to hi-lite some of the new data/information produced by Oregon Department of Fish and Wildlife (ODFW) which can be utilized in the development of HMPs.

STANDARD OVERVIEW

The Energy Facility Siting Council adopted the Fish and Wildlife Habitat standard, at OAR 345-022-0060, which requires the following:

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:

- (1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017, and*
- (2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effect as of February 24, 2017.*

The first part of the Fish and Wildlife Habitat standard requires the Council to find that the design, construction and operation of a proposed facility or facility, with proposed changes, is consistent with the ODFW's habitat mitigation goals and standards, as set forth in OAR 635-415-0025. The ODFW Habitat Mitigation Policy and EFSC Fish and Wildlife Habitat standard create requirements to mitigate impacts to fish and wildlife habitat, based on the quantity and

quality of the habitat as well as the nature, extent, and duration of the potential impacts to the habitat.¹

The policy also establishes a habitat classification system based on value the habitat would provide to a species or group of species. There are six habitat categories; Category 1 being the most valuable and Category 6 the least valuable.

The Fish and Wildlife Habitat standard also includes specific requirements for potential impacts from proposed facilities or facilities, with proposed changes, to sage-grouse habitat.

HABITAT MITIGATION PLANS

HMP's are important and significant mitigation requirements for certificate holders. During the siting process, prior to Council's decision on an Application for Site Certificate or Request for Amendment, HMP's are typically in draft format, meaning that many details have not yet been finalized. This includes finalization elements such as legally securing the site of the habitat mitigation area; confirming the scope and scale of enhancement actions suitable at the habitat mitigation area; developing appropriate success criteria and monitoring/reporting protocols and frequency to support tracking of the success of the actions to be implemented. An applicant or certificate holder is required to provide a proposed habitat mitigation area and complete a combination of desktop and field evaluation, to then inform expected habitat category and suite of potential enhancement actions.

Once finalized, HMPs are long-term obligations for a certificate holder, typically for the entirety of the operational lifetime of a facility which is intended to offset (mitigate) the permanent habitat impact of facility siting. Nearly every facility approved by EFSC has an approved HMP with long-term obligations. To date, EFSC has regulatory oversight over 24 operating facilities with HMP's. These HMP's have been in place from 1 to 24 years. Prior to siting of solar facilities, HMP's typically mitigated habitat loss from permanent impacts from wind facilities (i.e., wind turbine/turbine foundations, road development, substation and operations and maintenance building) where the mitigation obligation includes actions like weed control; seeding/planting of native plants; installation of nest platforms; fire management; and modification or restriction of livestock grazing on mitigation areas ranging in size from 2 to 50 acres.

The permanent footprint of an EFSC jurisdictional solar facility has recently exceeded 10,000 acres, compared to permanent footprint of a wind facility at 1-20 acres. While not all solar facility sites are comprised of wildlife habitat, the size of solar facilities is having an impact on habitat loss and the ability to secure suitable habitat sites. Only four permitted solar facilities have been constructed to date, with the largest being Daybreak Solar Project (1,817 acres in Wasco County). The habitat mitigation obligation for the Daybreak Solar Project includes enhancement actions of native plant restoration, western juniper thinning, and noxious weed treatment on over 1,200 acres within an established mitigation area. Restoration and conservation of these acres is an ongoing requirement.

¹ OAR 635-415-0005 defines habitat as, "...the physical and biological conditions within the geographic range of occurrence of a species, extending over time, that affect the welfare of the species or any sub-population or members of the species."

OAR 635-415-0005 defines habitat quality as, "the relative importance of a habitat with regard to its ability to influence species presence and support the life-cycle requirements of the fish and wildlife species that use it."

Once an HMP is approved and implementation of the requirements commence, the certificate holder is obligated to annually report to the Department on the status, including success of the enhancement actions. The Department's Compliance Team receives and reviews annual reports and conducts site inspections with ODFW to evaluate adaptive management strategies for long-term improvement and success. Because mitigation plans are not guaranteed to be successful, there is often a clause that allows for the plan to be amended once finalized, with future review and approval of amendments delegated by Council to the Department. While Council typically delegates future review and approval of mitigation plan amendments to the Department, the plans often maintain an obligation that the amended plan be presented to Council to provide an opportunity to approve, modify or reject the Department's recommendation.

NEW ODFW DATA, POLICY AND GUIDANCE

ODOE siting staff and ODFW fish and wildlife habitat staff meet every 6-weeks to discuss state jurisdictional projects and any relevant concerns; coordinate review and comment timeframes; and to discuss bigger policy issues such as facility siting (i.e., location selection/resource impacts) and HMP development. Some of the recent efforts by ODFW are hi-lited below.

In 2023, ODFW produced new Greater-Sage Grouse habitat maps, which have recently been adopted into the Oregon Land Conservation and Development rules (OAR 660-023-0115), which are intended to address potential conflicts between large-scale development and Greater Sage-Grouse habitat.

In January 2024, ODFW produced the Oregon Wildlife Corridor Action Plan which presents Priority Wildlife Connectivity Areas (PWCA) mapped throughout the state to guide the preservation of long-term habitat connectivity for a broad diversity of wildlife species. ODFW has not developed formal guidance on how to connect the Oregon Wildlife Corridor Action Plan to its habitat mitigation policy and/or mitigation goals for affected habitat. However, the Department is working closely with ODFW and applicants in the evaluation of PWCA locations within and in proximity to a proposed facility site. Measures such as PWCA avoidance for the proposed facility site and inclusion of PWCA's within a habitat mitigation area are being discussed.

In March 2024, ODFW produced Solar Siting Guidance to provide developers and ODFW staff with a framework for consistently evaluating proposed solar facility sites, ensuring appropriate levels of avoidance and adequate mitigation selection. Some of the key elements of the guidance is early consultation with ODFW, including working with ODFW prior to and after completion of an initial biological assessment of the proposed facility site. This essential coordination step allows ODFW to provide input on potential or known impacts to fish and wildlife resources and to be able to recommend the appropriate level of biological surveys necessary at the site to support permitting, including avoidance/design and mitigation.