



ENERGY FACILITY SITING COUNCIL

■ Kent Howe, Chair ■ Cindy Condon, Vice-Chair ■ Marcy Grail ■ Katie Imes ■ Ann Beier ■ Richard Devlin

Energy Facility Siting Council Meeting Minutes

**Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301**

Friday January 17, 2025 8:30 AM

- A. Consent Calendar (Action & Information Item)¹ – Approval of December 13, 2024 Meeting Minutes; Council Secretary Report; and other routine Council business.
- B. Application Process Rulemaking Phase 2 (Public Hearing)²
- C. Mist Underground Natural Gas Storage Facility RFA13 (Action Item)³
- D. Public Comment Period⁴
- E. 2025 Rulemaking schedule (Action Item)⁵
- F. Fish and Wildlife Habitat Standard Review (Information Item)⁶
- G. Siting Division Compliance Program Update (Information Item)⁷
- H. Madras Solar Energy Facility, Council Review of Draft Proposed Order (Information Item)⁸

¹ Audio/Video for Agenda Item A = 00:04:03 – 2025-01-17-EFSC-Meeting-Audio/Video

² Audio/Video for Agenda Item B = 00:33:07 – 2025-01-17-EFSC-Meeting-Audio/Video

³ Audio/Video for Agenda Item C = 00:50:50 – 2025-01-17-EFSC-Meeting-Audio/Video

⁴ Audio/Video for Agenda Item D = 01:46:50 – 2025-01-17-EFSC-Meeting-Audio/Video

⁵ Audio/Video for Agenda Item E = 01:59:11 – 2025-01-17-EFSC-Meeting-Audio/Video

⁶ Audio/Video for Agenda Item F = 03:30:08 – 2025-01-17-EFSC-Meeting-Audio/Video

⁷ Audio/Video for Agenda Item G = 04:32:25 – 2025-01-17-EFSC-Meeting-Audio/Video

⁸ Audio/Video for Agenda Item H = 05:24:06 – 2025-01-17-EFSC-Meeting-Audio/Video

The meeting materials presented to Council are available online at:
<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Call to Order: Chair Howe called the meeting to order on January 17, 2025, at 8:30 a.m.

Roll Call: Chair Kent Howe, Vice-Chair Cynthia Condon, Council Members Ann Beier, Richard Devlin and Katie Imes were present in person. Council Member Marcy Grail was present virtually.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary Todd Cornett, Senior Policy Advisor Sarah Esterson, Rules Coordinator Tom Jackman, Senior Siting Analyst Chase McVeigh-Walker, Compliance Officer Duane Kilsdonk, and Administrative Assistant Nancy Hatch. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe was also present. Operations and Policy Analyst Bibi Bartley was present virtually.

Agenda Modification: There were no agenda modifications.

A. Consent Calendar (Action & Information Item)⁹

Approval of December 13, 2024 Meeting Minutes

Council Member Beier motioned the Council approve the minutes of the December 13, 2024 meeting as presented and recommended by staff.

Vice Chair Condon seconded the motion.

The motion was carried unanimously.

Council Secretary Report - Secretary Cornett offered the following comments during his report to the Council:

Staff and Council Updates

- Ash Woods, Compliance Officer, resigned and her last day was January 10, 2025. The Department has begun recruiting for the position.
- The Department is in the final stages of recruitment for the additional Senior Siting Analyst and hopes to have the position filled soon.
- Vice Chair Condon has been officially nominated by Governor Kotek for a second term. The nomination will be reviewed by the Senate Rules Committee on February 10th.

⁹ Audio/Video for Agenda Item A = 00:04:03 – 2025-01-17-EFSC-Meeting-Audio/Video

Project Updates

- Archway Solar Energy Facility

On January 6, 2025 the Department received a formal withdrawal of the preliminary application for site certificate.

Vice Chair Condon asked if there was a specific reason given for the withdrawal of the application.

Secretary Cornett stated that one of the things mentioned is there have been some changes in the statutory jurisdictional thresholds and they may be pursuing a local government project versus an EFSC project.

- Montague Wind Power Facility – Amendment Determination Request

On January 8, 2025 the Department determined that a proposed concrete pad and an 18 by 36 ft operations and maintenance building, which would be shared by the Montague Wind Power Facility and Leaning Juniper IIB Wind Power Facility (shared certificate holders) would not trigger an amendment.

- Leaning Juniper IIA Wind Power Facility – Amendment Determination Request

The Department received the request that an amendment is not required for the proposed changes to the crane walk disturbance footprint, clarifying expanded decommissioning disturbance area for two wind turbines and expanding a storage yard area for the existing operations and maintenance building. Staff has initiated their review of the request.

- Cascade Renewable Transmission System – Notice of Intent Time Extensions

On January 16, 2025 the Department received a request to extend the Notice of Intent timeframe for the project by one year. The Notice of Intent was originally submitted in March of 2023. Per rule, an applicant has to submit their preliminary application for site certificate within two years. Applicants are required to submit the extension request at least 45 days prior to that deadline. The request was submitted within the required timeframe. The request will be evaluated for a good cause determination by Council at their next meeting.

Vice Chair Condon asked for clarification that while there is a good cause reason for an extension in the Notice of Intent phase of an application, there is no good cause reason for an extension of the construction phase.

Secretary Cornett confirmed that is correct.

- Daybreak Solar Project

At their December meeting, Council discussed the Department's determination that a sale-leaseback agreement between a bank and the certificate holder would not require review through the Council's site certificate amendment process. Council members Condon and Beier raised the following 2 questions/concerns on the long-term risks of this type of

agreement to the state in the scenario where the state has to decommission the facility because the certificate holder is unable.

1. There are risks and uncertainties to the Department in the scenario where a certificate holder does not submit a final retirement plan and is unable to retire the facility on its own. The rules establish that the Department would prepare a retirement plan for Council approval, and that civil penalties and any additional costs not covered in the bond/letter of credit the Department would have maintained on file must be paid by the certificate holder. If the certificate holder is unable to retire the facility on its own, it is assumed it is due to bankruptcy or similar financial/organization limitations. If the certificate holder has minimal or no assets, because those assets are owned by the Bank under the sale-leaseback agreement and the Department does not have access to the parent company, how would the certificate holder be able to pay any additional decommissioning costs or civil penalties?
2. It has generally been understood that under the LLC-certificate holders are assigned facility assets, once the facility is constructed and operational, and therefore has at least some capital the Department would have access to if needed to recover additional costs beyond the amount covered in the bonds and letters of credit that are on file. Because the Bank would own the assets and the certificate holder has otherwise gone bankrupt, the Department needs to evaluate the risk of decommissioning costs/civil penalties that can't be recovered.

Vice Chair Condon and Council Member Beier confirmed the summary of their concerns. Further discussion included additional scenarios involving an LLC and the parent company if the LLC failed.

Counselor Rowe concluded the discussion by recommending Council examine the issue of sale-leaseback agreements in its rulemaking process.

Legislative Updates

The legislative session has begun. The Department began reviewing the over 2000 presession filed bills to determine which and how many of those are related to EFSC. Currently, there are two bills that would change EFSC statutes.

- House Bill 2410 - Would allow EFSC the ability to approve a small modular nuclear reactor demonstration project in Umatilla County and directs ODOE, LCDC and the PUC to prepare a report for the legislature related to all statutes and rules that may need to be amended in order to allow for such an approval. The bill would also not require a permanent federal repository for radioactive waste before EFSC can approve a nuclear project and would also not require the electors of the state approve a nuclear power plant before EFSC can approve it.
- House Bill 2375 - Would require new, or repowered wind projects apply to the Federal Aviation Administration for installation of a light mitigation technology system and if approved, install it within 24 months. This is an effort to reduce or remove the lights at night on wind turbines but maintain the safety aspects with lights.

Upcoming Meeting Dates

There will not be a February EFSC meeting. The March meeting dates are March 20-21 though the meeting will most likely be a one day meeting on March 21st.

B. Application Process Rulemaking Phase 2 (Public Hearing)¹⁰ – Tom Jackman, Rules Coordinator. Staff hosted a hearing for public comment on this rulemaking.

The hearing was called to order at 9:05 am.

Ms. Irene Gilbert - Commented the statute states that if an individual has concerns about resources or interests based on an action of an agency, they have the opportunity or the right to have a contested case request and a right to due process. She stressed that the word "interests" has been added to the statute. She noted immediately following that rule in statute, it states that if an agency fails to provide timely opportunity for the individual to have their issue heard or the opportunity to have due process, the courts can order the agency to provide timely notice. She noted her concern regarding the denial decisions made by the Administrative Law Judge for the Boardman to Hemingway Transmission Line project regarding contested case requests as not allowing for due process or an appeal process as she believes that is contrary to the statute. She added waiting a month to be able to deal with an issue does not seem timely to her.

The hearing was closed at 9:19 am.

C. Mist Underground Natural Gas Storage Facility RFA13 (Action Item)¹¹ – Sarah Esterson, Senior Policy Advisor and Patrick Rowe, Assistant Attorney General. Council reviewed six requests for contested case.

Council Member Devlin noted that he would like Council to review the need standard in a future meeting to see if there are any changes that need to be made.

Issue 1 - OAR 345-023-0005 (Need Standard) gives Council the authority to apply a need standard to RFA 13 without further rulemaking.

Council Member Imes motioned Council find The Green Energy Institute at Lewis and Clark Law School properly raised Issue 1 as described in OAR 345 Division 027 Section 0371(7)(a); but that Council deny the request for Contested Case on Issue 1 because, for the reasons provided in the Department's staff report and the presentation today, Issue 1 does not raise 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.

¹⁰ Audio/Video for Agenda Item B = 00:33:07 – 2025-01-17-EFSC-Meeting-Audio/Video

¹¹ Audio/Video for Agenda Item C = 00:50:50 – 2025-01-17-EFSC-Meeting-Audio/Video

Council Member Devlin seconded the motion.

Council Member Beier thanked Staff for providing the historical references that demonstrated the legislative history and council history on how the need standard was intended to be applied.

The motion was carried unanimously.

Issue 2 - Council should exercise its authority to apply a need standard based on Oregon's energy/climate change goals.

Council Member Beier stated the staff report includes specific responses to the individual questions raised by the Green Energy Institute. She noted that the record supports any decision regarding individual factors like the climate protection plan and the other things that have been specifically addressed in the record.

Council Member Beier motioned Council find The Green Energy Institute at Lewis and Clark Law School properly raised Issue 2 as described in OAR 345 Division 027 Section 0371(7)(a); but that Council deny the request for Contested Case on Issue 2 because, for the reasons provided in the Department's staff report, Issue 2 does not raise 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.

Council Member Devlin seconded the motion.

The motion was carried unanimously.

Issue 3 - Groundwater contamination potential due to abandoned wells.

Vice Chair Condon motioned Council find Daniel Schatz properly raised Issue 3 as described in OAR 345 Division 027 Section 0371(7)(a); but that Council deny the request for Contested Case on Issue 3 because for the reasons provided in the Department's staff report, Issue 3 does not raise 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.

Council Member Grail seconded the motion.

The motion was carried unanimously.

Issue 4 - Geologic hazards not properly assessed in Exhibit H is outdated according to updated USGS maps created in 2020 surficial geology not properly assessed in Exhibit H.

Council Member Devlin motioned Council find Daniel Schatz properly raised Issue 4 as described in OAR 345 Division 027 Section 0371(7)(a); but that Council deny the request for Contested Case on Issue 4 because for the reasons provided in the Department's staff report, Issue 4 does not raise 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.

Council Member Grail seconded the motion.

The motion was carried unanimously.

Issue 5 - The draft proposed order process violated OAR 345-027-0367 (7).

Ms. Esterson noted this issue was not raised on the record of the Draft Proposed Order public hearing because it is an allegation of a procedural issue that happened upon issuance of the Proposed Order, and that it is allowable to be raised in a contested case request.

Council Member Imes motioned Council find American Aquifers did not properly raise Issue 5 as described in OAR 345 Division 027 Section 0371(7)(a) and is therefore denied.

Council Member Devlin seconded the motion.

The motion was carried unanimously.

Issue 6 - There is a conflict of interest between DOGAMI, the Department, and Haley Aldrich, the Department's third-party consultant.

Vice Chair Condon motioned Council find Samuel Semerjian and American Aquifers properly raised Issue 6 as described in OAR 345 Division 027 Section 0371(7)(a); but that Council deny the request for Contested Case on Issue 6 for the reasons provided in the Department's staff report. Issue 6 does not raise 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.

Council Member Beier seconded the motion.

The motion was carried unanimously.

Vice Chair Condon noted her appreciation for the detailed information Staff provided to Council prior to this meeting as this agenda item was complex with the legal discussion.

Final Order

Council Member Beier motioned the Council issue a Final Order approving the certificate holder's request for amendment 13 to the site certificate for the Mist Underground Natural Gas Storage Facility, utilizing the Department's Proposed Order as the basis for the Final Order, and issue the 13th amended site certificate consistent with the Final Order.

Council Member Devlin seconded the motion.

The motion was carried unanimously.

D. Public Comment Period (Information Item)¹² – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

Ms. Irene Gilbert - Expressed her concern for Council's decision regarding its ability to adjust a bond amount down to a dollar. It is important that the bond amount is adequate to restore the site as presented in rule. A one dollar bond amount is hard to justify that it is adequate to restore the site. She stated that there are multiple unpredictable issues that can affect whether utilities are going to be able to meet their commitment to restore a site, such as severe wildfires and the financial effects on the utilities, and changes to mitigation issues which require additional resources for the developers. She questioned how anyone could predict the outside sources and the impacts that are going to play out in the financial situation of a developer.

Vice Chair Condon stated there is language in the bond that allows review by Council and amendment at any time. The unpredictability of future issues was discussed by Council and was a basis for the change in bond language which now allows for review at any time.

Chair Howe closed the public comment period.

E. 2025 Rulemaking schedule (Action Item)¹³ – Thomas Jackman, Rules Coordinator presented the proposed 2025 Rulemaking Schedule, which included the following for each proposed rulemaking: a summary; recommendations for how to obtain public input; and a draft schedule.

Regarding the modernization of rulemaking, Secretary Cornett stated that such updates include items like the use of a fax machine for comment submittals.

Vice Chair Condon asked in regard to the examination of hard copy submission requirements, is the contemplation whether to eliminate the hard copy.

Mr. Jackman confirmed, to the extent possible. He explained currently applicants are required to submit their application in hard copy as there were computer system limitations with the number of documents that could be transmitted digitally. As the systems are much more robust currently, Staff will be reviewing the need for hard copies and if the Department can do something that is less wasteful but still meets the requirements of statute.

Vice Chair Condon noted that there is uncertainty with viability of digital media for long term storage. She suggested there may be a need to store a hard copy of applications as EFSC projects are long term.

¹² Audio/Video for Agenda Item D =01:46:50 –2025-01-17-EFSC-Meeting-Audio/Video

¹³ Audio/Video for Agenda Item E =01:59:11 – 2025-01-17-EFSC-Meeting-Audio/Video

Secretary Cornett stated the Department has a specialized retention policy that all of our materials stay in perpetuity because these projects are on the landscape for years. Many of the paper documents from years ago have been converted to digital. The Department is in the process of converting all the older documents into a digital format that can move forward into the future.

Council Member Devlin noted it is very expensive to retain physical copies of all documents.

Mr. Jackman stated while agency data is stored in one place, it is actually stored on two drives. If one fails, there is a backup, as well as being stored in the cloud. The agency uses data redundancy to be sure all documents are secure.

Secretary Cornett responded to Council Member Devlin's comment noting that converting hard copies to digital is time consuming. It is a huge effort and is currently ongoing.

Council Member Grail stated the pressure to get away from paper is increasing. Council has been reminded by the public of the State's goals involving environment, efficiency and conservation. She suggested during the transition to becoming completely digital, it would be appropriate to provide an option for printing hard copies.

Council Member Imes asked, regarding the Exemptions Rulemaking, whether this would be in relation to the new Least Conflict Solar Siting rules for Greater Eastern Oregon.

Secretary Cornett responded no. Exemptions are very specific about what types of facilities would be exempt from having an approved site certificate. It involves a small subset of types of facilities.

Council Member Beier requested an example of a current site exemption.

Secretary Cornett provided that if co-generation facilities are over a certain threshold they are EFSC jurisdictional, but if less than another threshold they are eligible for an exemption. A recent specific example is the bio-fuel facility proposed near EFSC's Port Westward facility.

In reference to the prioritization of the Application Process Review, Council Member Beier stated it would be helpful to have the input from developers and members of the public regarding which standards are a bigger priority to them.

Secretary Cornett noted there is a public comment period provided during the agenda item at the meeting today. He further noted that Council can change its prioritization order at any time. The prioritization order is not legally required but is provided to create some expectation and understanding of which projects will be worked on.

Vice Chair Condon questioned if the standards would remain individual though the Rulemaking Advisory Committee (RAC) would discuss two standards when convened.

Mr. Jackman confirmed that is correct. Staff is not proposing combining any standards into one. He noted that it is possible that through the process of the review there could be some recalibrating of how the standards are divided.

Council Member Beier stated there may be things happening in other agencies that may need to be considered when making the schedule.

Council Member Devlin noted the rulemaking combinations proposed are done in a manner of one rulemaking that is more commonly discussed by Council and one that is less commonly discussed.

Mr. Jackman stated Staff has worked to make logical groupings rather than 17 different rulemakings and RAC's.

Secretary Cornett stated in addition to significance, within all these groupings there are relationships between the standards. He reminded Council has the authority to regroup the rulemakings in any way that they think may make more sense.

Vice Chair Condon noted that Financial Assurance is discussed every year as part of the review of bonds and letters of credit. She agreed that the grouping of Financial Assurance and Operational Expertise together for review is logical.

Council Member Beier stated generating interest and filling the RAC's will be important for this rulemaking schedule.

Mr. Jackman agreed, adding that the RAC is one of the primary drivers for the rulemaking process. It involves tracking down the people who care about the rulemakings, ensuring there is a diverse representative group of stakeholders and organizing that group of people to meet on the rulemaking at the same time which can be challenging.

Referring to the 5-year review of the 2020 Amendment of Site Certificates Rulemaking, Vice Chair Condon questioned if there was a step in the 5-year review for Council to evaluate the effectiveness of rules.

Mr. Jackman stated whether the rule has had the intended effect is included in the Secretary of State's 5-year review questions. If it is not achieving the intended goal, Council would be motivated to update the rule.

Chair Howe opened a public comment period for the proposed rulemaking schedule.

Ms. Irene Gilbert – Expressed appreciation for the structured public comment process, allowing time for written submissions following oral comments. She raised concerns about the contested case process, arguing that the requirement for agencies and counties to submit separate public comments to preserve their ability to participate in a contested case is redundant. Ms. Gilbert urged the Council to provide clearer criteria for granting full party status in contested cases, ensuring that public participation remains meaningful. She also recommended requiring developers to include street names and landmarks on facility maps for greater transparency. Additionally, she advocated for Council to define evidence for contested case requests from the public. She further noted that Type C reviews are not working as the public does not know about the reviews until the decision is made. She believes there will be damage to resources as a result of the decisions on a Type C review and monitoring mitigation plans that do not occur until after the site certificate is issued.

Vice Chair Condon asked, with respect to the rulemaking schedule, if there is a specific rulemaking Ms. Gilbert felt was a priority.

Ms. Gilbert responded her priorities would include wildlife mitigation and protected areas including the historical property section.

Mr. Cole Souder, representing the Green Energy Institute – Recommended the Council prioritize updating Division 23 rules regarding the "need standard" for energy facilities. He emphasized that Oregon's energy strategy has shifted significantly in the past five years, with a focus on decarbonization and renewables. He also suggested allowing the public an opportunity to respond to staff reports in contested case evaluations, particularly when new evidence is introduced late in the process.

Secretary Cornett clarified that the Division 27 Amendment Rulemaking is currently being conducted and is open for comments. The need standard has not been included in the schedule for review, but Council could add to the schedule.

Council Member Devlin stated he would like to see Council have an informed discussion on the need standard and examine if any of the standards need to be revised or if additional need standards should be considered. He stressed he did not want to change the process Council is currently scheduling, but would like Council to be prepared to revisit at a later date.

Secretary Cornett stated his understanding, noting that Staff can have an informational agenda item to discuss the need standard in the 2025 meeting schedule.

Council Member Devlin agreed, adding that having an informed discussion regarding a need standard would be in the best interest of the Public and the Council.

Secretary Cornett offered the clarification that Council does not have authority to create a need standard for generating facilities, as it is precluded by statute. The need standard is only for non-generating facilities.

Each Council Member voiced their opinion for the proposed sequence of the Phase 3 Rulemaking and conducted a straw poll to determine the Council's recommendation for the sequence. At the conclusion of the discussion and straw poll, the Financial Assurance and Organization Expertise was determined to be the first standard Council would like to review followed by Waste Minimization, Public Services and Land Use standard. The Protected Areas, Scenic Resources and Recreation standard would be the next standard reviewed.

2025 Rulemaking Schedule

Council Member Beier motioned the Council approve the 2025-2027 EFSC Rulemaking Project Schedule as presented and recommended by staff, with the following prioritization of the identified Phase 3 rulemakings and with the following changes(of sequence):

1. Financial Assurance + Organizational Expertise
2. Waste Minimization + Public Services + Land Use
3. Protected Areas + Scenic Resources + Recreation

And add the following rulemakings after 2025: Wildfire Standard review, Cumulative Effects review, and a review of the General Standard of Review

Council Member Devlin seconded the motion

The motion was carried unanimously.

5-Year Review of Amendment Rules

Council Member Devlin motioned the Council approve Amendment of Site Certificates Rulemaking – 5 Year Review as presented and recommended by staff in the January 3, 2025 staff report.

Council Member Grail seconded the motion.

The motion was carried unanimously.

F. Fish and Wildlife Habitat Standard Review (Information Item)¹⁴ – Sarah Esterson, Senior Policy Advisor and Jeremy Thompson, ODFW Energy Coordinator. Council received a presentation about the standard; new ODFW data, policy and guidance; and information

¹⁴ Audio/Video for Agenda Item F = 03:30:08 – 2025-01-17-EFSC-Meeting-Audio/Video

regarding habitat mitigation area and plan requirements for EFSC jurisdictional energy facilities.

Council Member Imes referring to ODFW's work involving the wildlife mitigation plans included in their Solar Guidelines, asked if the guidelines correlate to wind projects.

Mr. Thompson stated the guidelines are focused on solar energy as there is a framework for wind provided in the Federal Wind Energy Guidelines published by US Vision Wildlife Service. Many of the species of concern are federally managed species. Additionally, ODFW utilizes the Columbia Basin Wind Siting Guidelines.

Council Member Beier confirmed her understanding of the use of a mitigation bank as a three party transaction with the bank developer, the solar developer, and ODFW which involves the matching of the mitigation service area to the bank developer.

Mr. Thompson confirmed that is correct. The use of a mitigation bank is part of ODFW's current process of trying to look at how to be more concise with mitigation recommendations, have them be more successful for the applicant and have better ecological outcomes in the back end. A mitigation bank provides an option for developers to pay a fee and have someone else take care of the mitigation obligations, like a pre-done mitigation.

Vice Chair Condon asked if the certificate holder is still responsible for successful mitigation under the mitigation bank concept.

Mr. Thompson stated the mitigation bank option is like a payment to provide plan. The applicant would buy credits at the mitigation bank. The bank's sponsor, the land manager or owner depending on the scenario, would then assume responsibility for the long term maintenance management and needed uplift on those acres to meet the offset required under their site certificate. The bank manager would submit the annual reports on the status of the land.

Secretary Cornett added the formula for the fees associated with the mitigation bank option provides long term assurances and has built in contingencies similar to the In Lieu Fee formula.

Mr. Thompson agreed, noting that with the mitigation bank scenario, ODFW has a durability agreement which allows for enforcement ability. Additionally, the mitigation bank is required to be bonded. If ODFW sees a deficiency within the agreed upon habitat standard, there is the ability to draw from a separate account and do the required work on behalf of the bank manager.

Council Member Beier clarified her understanding that if Council issues a site certificate with a bank as the party responsible for the mitigation, the site certificate holder has no

responsibility for that mitigation bank once they paid the check to the bank. The bank is then responsible subject to oversight and review by ODFW. She questioned if Council should include a linking condition to the site certificate.

Ms. Esterson provided as the mitigation bank is new, the Department requires a reporting obligation. There is no recourse for the mitigation bank option as the mitigation fees, including fee for contingencies, are included in the formula.

Council Member Devlin asked who is the bank manager and is it a nonprofit entity?

Mr. Thompson provided it is a company that has come to the state of Oregon specifically to develop and manage mitigation banks. It is not a nonprofit organization.

Vice Chair Condon questioned her understanding that should a failure happen the ODFW has further recourse to the mitigation bank to ensure that Council approved mitigation outcome is achieved.

Mr. Thomson stated that is correct as there are different financial backings which provide more of a guaranteed desired outcome than in the past.

Ms. Esterson stated if developers, applicants or certificate holders start to use the In Lieu Fee or the mitigation bank options, there will be less work for Staff and Council to do in the permitting process and for compliance as the mitigation bank will be overseen by ODFW.

Council Member Beier asked if there were any mitigation banks interested in the Columbia Basin area.

Mr. Thompson stated though it is early in discussions, there is a mitigation bank sponsor that is working on a project for nearly all of the Columbia Basin area.

Vice Chair Condon expressed her concern regarding the value of credits (up front) and the possibility of the value of the credits not matching up to the offset needed in the future.

Mr. Thompson explained that there is not concern for the value of the upfront credits as the valuation is spread over for the duration of the mitigation bank.

Council Member Beier stated in the early stages of solar development, the direction from ODFW was not as specific and clear. Having the new formula accounting for all the different real costs of mitigation provides developers with needed information early in the process.

Secretary Cornett stated EFSC's standard is ODFW's policy. There is a direct one to one relationship with the work done. The mitigation bank and the In Lieu of Fees options allow for a more seamless opportunity for our evaluation, and for the mitigation to be consistent with the ODFW, whose directive is to protect resources.

G. Siting Division, Compliance Program Update (Information Item)¹⁵ – Duane Kilsdonk, Compliance Officer, Sarah Esterson, Senior Policy Advisor and Bibi Bartley, Operations and Policy Analyst. Council received an update on the status of the compliance program including energy facilities in the preconstruction and construction phase; and of operational facilities and 2024 inspection results. Council also received an update on the forecasted resource needs and 2025 program goals.

Council Member Imes asked if there was an update on the agrivoltaics programs for sheep grazing at solar facilities.

Ms. Esterson provided the Montague Solar project has incorporated sheep grazing at the site. The Department should receive the required report on the mitigation plan by April 30th.

Noting there were several compliance issues at the Biglow Canyon Wind Project, Council Member Imes inquired when the facility began operations.

Secretary Cornett provided Biglow Canyon began operation in December 2007 and is one of the older wind facilities under EFSC jurisdiction.

Council Member Imes questioned if the large number of incidents was common for older facilities.

Mr. Kilsdonk stated a large wind turbine is a significant piece of mechanical equipment which can have issues. The facility is replacing components that are failing through a corrective action situation.

Ms. Esterson provided incident reporting is a rule requirement and is often incorporated as a condition in the site certificate. Additionally, certificate holders are obligated to report as soon as possible any issues of non-compliance or perceived violation. The concern is for the issue of compliance with site certificates. In regard to the older wind facilities, it is difficult to get at the issue 20 years after the site certificate conditions were established.

Council Member Devlin asked if universally wind facilities have internal monitoring systems currently.

Mr. Kilsdonk confirmed all the components are being monitored. They are being updated every year as communication of issues with other similar turbines is shared and utilized as a learning tool. The monitoring of the wind facilities is becoming increasingly sophisticated.

Council Member Devlin questioned what information is contained in a facility's report of a compliance issue and would it be presented to Council.

¹⁵ Audio/Video for Agenda Item G =04:32:25 – 2025-01-17-EFSC-Meeting-Audio/Video

Secretary Cornett stated certificate holders have 72 hours to report any incident. Staff evaluates the report to determine if it is related to a Council finding, a Council standard or condition. If determined that it is not a violation or issue of non-compliance, the report is considered complete. If determined that there is more significant issue that is related to a finding or a condition, the Department will request more information and details. Staff will evaluate and, based upon the requirements associated with the conditions, determine any corrective action needed. Any issues of non-compliance are included in the Secretary report at EFSC meetings.

Council Member Devlin confirmed his understanding that if there is an incident, the first determination is whether the mitigation and compliance plans were followed.

Secretary Cornett stated that was correct.

Council Member Imes observed that the forecasted cost and hours for construction are significantly lower than the actual cost and hours as presented.

Secretary Cornett stated the Department has an obligation every fiscal year to estimate what the costs are associated with compliance with each facility and then collect the fees for each facility. As such, the Department has become more efficient in terms of estimations. If a facility has unanticipated major construction related issues, that could result in significant additional cost.

Council discussed the forecasted cost for construction presented (\$27,161.00) and reasons for the low amount. Ms. Esterson expressed her concern that the cost presented may not be correct as there were three projects in the construction phase. She will confirm the data and update Council at a future meeting.

Council Member Imes expressed her appreciation for the utilization of field maps for site visits as it helps to provide real time information and tracking abilities.

H. Madras Solar Energy Facility, Council Review of Draft Proposed Order (Information Item)¹⁶
– Chase McVeigh-Walker, Senior Siting Analyst. Council reviewed the Draft Proposed Order on Site Certificate Amendment 1 of the Madras Solar Energy Facility (DPO), and issues raised in comments received on the record of the DPO public hearing. The site certificate authorizes construction and operation of a 63 megawatt (MW) solar facility in Jefferson County. The amendment request seeks approval to extend the construction commencement deadline by 3 years.

Vice Chair Howe asked if the access to Pelton Line referred to by Confederated Tribes of Warm Springs (CTWS) in their Issue one statement would be similar to an easement.

¹⁶ Audio/Video for Agenda Item H =05:24:06 – 2025-01-17-EFSC-Meeting-Audio/Video

Counselor Rowe stated that an easement is a land owner allowing someone the right to access their privately owned property. CTWS is the co-owner of the line therefore they already have the right to access the line. Rather, the Department is recommending imposing a condition that requires the certificate holder to not block CTWS' ability to access the line.

Council Member Devlin questioned if the ability for interconnection to the transmission line was an underlying requirement condition for a goal 3 exemption for the Madras Facility.

Counselor Rowe clarified that one of the three reasons Council granted the exception was locational dependence because that line was there, and the applicant stated they would be able to interconnect. There is no requirement that they have secured an interconnect agreement.

Secretary Cornett noted that every generating project proposed indicates the point of interconnect. None of them actually have an interconnect agreement at the time of application submission. It is up to the certificate holder and the transmission line parties to negotiate the connection, which in this case will be a combination of FERC, PGE and CTWS.

Council Member Beier asked if Council has ever required proof of an interconnection agreement as a condition for approval of a site certificate.

Counselor Rowe noted that Council granted the locational dependence as a reason for the exception subject to an interconnection agreement preconstruction condition for the West End Solar project.

After further discussion regarding the preemption issue comment received from CTWS, Council Member Beier offered Council is not granting a preemptive measure but is explicitly expecting the applicant to provide access to the substation and transmission line and provide Council with an amended site plan to demonstrate access will be provided. Council is discussing confirming an exception to Goal 3 by providing a condition that the applicant demonstrates an interconnect agreement prior to construction.

Vice Chair Condon stated the Council's comments represent the Council's expectation of having an interconnect agreement prior to the approval of a site certificate.

Secretary Cornett provided it is highly unlikely that an applicant will have an interconnect agreement or a power purchase agreement prior to securing a site certificate. There are nuances of how likely that is to happen and how the plan for acquiring an interconnect agreement is articulated in the site certificate application, which Council can be responsive to.

Addition to the Secretary Report

Secretary Cornett provided a project update.

Deschutes Solar Project- The Department received a Notice of Intent for a proposed Solar Facility on Jan 17, 2025.

Chair Howe adjourned the meeting at 3:20 pm.

Future Energy Facility Siting Council Meeting:

- **March 20-21, 2025**
- **April 10-11, 2025**

FINAL