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To: Oregon Energy Facility Siting Council

From: Thomas L. Jackman, Rules Coordinator

Date: March 07, 2025

Subject: Agenda Item C (Action Item) – Consideration of Application Process Phase 2 Permanent Rulemaking for the March 21, 2025 EFSC Meeting

Attachments: Attachment 1 – Draft Rules
Attachment 2 – Draft Rules Crosswalk
Attachment 3 – Public Comments

BACKGROUND AND SUMMARY

As part of the 2024-2026 Rulemaking Schedule, the Council directed staff to continue its work on its comprehensive review of the rules governing the site certificate application process. Phase 1 of this effort was completed in 2023. That phase was designed to improve the readability of the application process rules found in Division 015.

Phase 2 of the Application Process Review Project is intended to be a review of application information and procedural requirements currently located in divisions 020 and 021 to ensure that requirements align with what is needed to demonstrate compliance with the Council's standards.

The original intent for this rulemaking effort was for staff to evaluate whether the requirements should be removed, or if the standards should be modified to conform to application requirements (and vice versa). In December 2024, staff requested that the Council modify the scope of this rulemaking and narrow it solely to a migration of application information requirements to the rules in which their respective standards are found. At this point the rulemaking became a relatively straightforward reorganization of the rules with no substantive changes.

Below is a summary of the objectives of the draft language and an overview of the draft rules found in Attachment 1.

APPLICATION PROCESS PHASE 2 RULEMAKING - OBJECTIVES

The Application Process Phase 2 rulemaking is intended to achieve one main goal: reorganize the rules so that the rules containing the Council's standards (found in OAR 345, divisions 022

through 024) also contain the information an applicant is required to submit to Council for those standards.

Notably, this focused objective no longer includes removing information requirements that are deemed unnecessary or redundant. Nor did staff attempt to identify where new requirements should be added to ensure staff is given the information they need to ensure compliance with the Council's standards. This important task is now expected to take place on a standard-by-standard basis—with some standards being reviewed in groups where it makes sense to do so. Per the approved 2025-2027 schedule, the review of the Council's standards is expected to begin later in 2025.

OVERVIEW OF THE PROPOSED DRAFT LANGUAGE

The focused scope of this rulemaking makes describing the proposed draft rules very simple: all the information requirements in Division 021 that are tied to Council standards have been moved to their associated sections in Divisions 022, 023, and 024. Note that Division 021 still exists in the proposed rules, as it contains some general instructions as well as some general background information requirements that are not tied to Council standards. However, it is much smaller than as seen in the current version of the rules.

One notable change that is also being proposed is the replacement of all exhibit letters with the subject matter of the exhibit, e.g., "Exhibit P" would now be called the "Fish and Wildlife Habitat Exhibit." This should make it easier for all participants of the siting process to understand what the various exhibits in a siting application are referring to.

Additionally, it should be noted that while no substantive changes have been made to the information requirements, some exhibits will now be merged, e.g., Exhibits A, D, and E will now be merged into the "Organizational Expertise Exhibit." This should make it easier to locate all information related to the organizational expertise standard, instead of having related information located in multiple exhibits.

Attachment 2 is a crosswalk of the relationship between the current standards and the information requirements for those standards that are laid out in Divisions 022 and 021, respectively. Staff utilized this crosswalk to migrate the information requirements to the appropriate locations. Note that the blanks in the chart indicate either an information requirement that is not tied to a standard or a standard that lacks an associated information requirement. Addressing these gaps will be one of the main tasks of phase 3 of the application process rulemaking update.

Lastly, regarding the draft proposed language in Attachment 1, it is helpful to know the following:

- As discussed above, the application rule language from OAR 345-21-0010 (aka, the exhibits as they exist now) can now be found throughout Divisions 022, 023, and 024. This transferred language is **colored blue**. To keep the exhibit manageable, the language

removed from 0010 is not displayed in redline as that would have generated numerous pages of strikeout text. Just know that all the blue language in the draft used to be in OAR 345, division 021.

- Language that has been altered from the original text or added to the rules is done using traditional red and ~~strikeout~~. Language in ~~strikeout green~~ is language that was literally cut and pasted somewhere else in the document.

PUBLIC FEEDBACK

The public coming period for the rulemaking ran from December 19, 2024 through February 5, 2025. A public hearing was held at Council's January meeting, on January 17, 2025.

At the public hearing, while ostensibly providing comments on the Phase 2 rulemaking, Ms. Irene Gilbert spoke about the contested case process and did not speak to the proposed rule changes. No other comments were submitted at the public hearing.

Three parties submitted written comments (included in their entirety as Attachment 4). The first was submitted via the comment portal. Unfortunately, it the submission lacks a name, however it is supportive of the rules as proposed and seeks no further changes.

The second is from Renewable Northwest (RNW), who expressed four concerns with the proposed rules. These concerns are as follows:

First Concern

The first concern relates to the "redundancy of information now required in various sections. . ." RNW acknowledges that the rules allow for cross-referencing across exhibits but wishes that new applications would also be able to cross-reference prior-approved applications where applicable.

Staff Response

Staff does not recommend making any changes pursuant to this concern. Staff feels that the rules as laid out already allow for sufficient efficiency with respect to any potential duplication of additional material across standards. If information submitted for one standard is relevant to another standard, applicants can simply cite the respective exhibits.

The ability to cite other applications and *their* exhibits is an entirely separate issue. To the extent that relevant information for a current application is included in a prior application, staff suggests that this information simply be included again (e.g., via a copy a paste, with modifications where appropriate) and that it would be unfair to both staff and the public to expect those reviewing an application to seek out and reference a prior application via a reference.

Second Concern

RNW's second concern is regarding the changing of the exhibit naming process, specifically that the new exhibit names are not explicitly laid out in the rules under each of the individual rules related to the various Council standards – only an example is given for the intended new naming scheme. RNW is concerned that this will lead to inconsistent naming by future applicants.

Staff Response

Staff does not recommend making any changes pursuant to this concern. Staff is aware and sensitive to the fact that there will be a learning curve for applicants familiar with the previous naming scheme. However, staff feels that the name of each required exhibit is sufficiently clear: "[Name of Standard] Exhibit." The names of the standards are explicitly in the rules, thus there should be no ability for applicants to come up with their own exhibit names. Additionally, the names of all exhibits will be on the Council's website. The entire point of this new naming scheme is that it requires no additional awareness of Council's process. Whereas before someone had to do research to figure out what was in "Exhibit K," it is abundantly clear what is in the "Land Use Exhibit."

If Council feels that the example provided in the rules is insufficient to eliminate any confusion as to the intended naming of the exhibits and that the names of all the exhibits should be inserted into the rules themselves, staff will do so.

Third Concern

RNW's third concern is how the amended rules will be rolled out should they become permanent.

Staff Response

The answer to this concern is straightforward – once Council approves the rules and staff submits them to the Secretary of State, all future application submissions will be required to use the new formatting. If applicants are concerned about how to properly follow this updated process, they are welcome to reach out to staff, as some applicants with pending applications already have.

Fourth Concern

RNW's fourth concern is with respect to the removal of "unless directed by the Department that the information does not apply" in reference to OAR 345-022-0130, which describes information that is submitted to assist the Council in determining compliance with all applicable state and local laws and regulations.

Staff Response

Staff does not recommend making any changes pursuant to this concern. The project order details the scope of the application requirements for a given application and should any

information requirements not apply to a given application – or should additional information requirements apply – the project order will detail this.

The third comment was submitted by Friends of the Columbia Gorge (“Friends”). They had two concerns: first, that the description of the rulemaking in the monthly siting report did not match the narrowed scope of the rulemaking as approved by the Council at its December 2024 meeting and second, that the draft rules still retained exhibit letters, contrary to the stated intent of the rulemaking to do away with them.

With regards to the first, Friends requests a new public comment period if the scope of the rulemaking was not actually narrowed, as approved by the Council. As shown by the text of the draft rules submitted with this report, the scope of the rulemaking was indeed narrowed to structural changes only. With regards to the second comment, as indicated by Staff at the December 2024 Council meeting, all “lettered” exhibit references will be removed from the permanent rules submitted to the Secretary of State, but the prior exhibit letters were left in the draft rules to make it easier for reviewers to understand how the various elements of the application information requirements were moved around.

ONE CHANGE

Staff recommends one minor change to the rules from what was previously proposed, which is changing the connecting language for each of the standards and their respective information requirements as follows:

“To ~~assist Council in determining~~**demonstrate** that the standard outlined [above] has been met, the Applicant must submit the following information:”

Staff suggests that the meaning of the originally proposed language matches this proposed language, but that the newer language more clearly establishes the information requirements as being just that: information requirements. In other words, the information submitted by the applicant is not itself the standard, but the means whereby the Council makes a finding that its standards have been met. Staff recommends making this proposed change for each of the rules, as shown in Attachment 1.

STAFF RECOMMENDATION

Staff recommends that the Council direct staff to file a permanent rulemaking order for the Application Process Phase 2 Rulemaking using the rule language in Attachment 1.