



Oregon

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To: Energy Facility Siting Council

From: Sarah Esterson, Senior Policy Advisor

Date: December 5, 2025

Subject: Agenda Item F (Information Item): Council review of mitigation option under the Fish and Wildlife Habitat Standard (OAR 345-022-0060) for December 19, 2025 EFSC Meeting

Attachments: Supplemental Information (to be provided in Dec 12 packet materials)

The goal of this agenda item is to provide the Energy Facility Siting Council (EFSC or Council) an update on mitigation banking, as an available mitigation option, associated with the Fish and Wildlife Habitat standard.

BACKGROUND

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.

HABITAT MITIGATION

Nearly every proposed and permitted EFSC-jurisdictional wind and solar facility has resulted in potential or actual permanent habitat impacts from the permanent placement/siting of facility infrastructure. Permanent habitat impacts must be mitigated in accordance with the applicable mitigation goal for the established habitat category. Historically, the proposal for habitat mitigation has been one that is proposed to be implemented and managed by the permittee, or “permittee responsible mitigation.” While applicants and certificate holders have started to propose additional options including mitigation banking or in-lieu fee payment to ODFW, these options have not yet been fully tested or are not yet available.

Progress is being made for the mitigation bank option, where a structured process is emerging, even resulting in an EFSC jurisdictional project, Boardman to Hemingway Transmission Line, successfully mitigating habitat impacts through purchase of credits from an ODFW approved mitigation bank.

ODFW has established a process where a potential bank is reviewed and approved through a formal agreement. A mitigation bank must be approved by ODFW. For this review and approval process, a potential bank must submit maps; management and operation documents, including information related to their financial ability to guarantee long-term stewardship; real estate records and assurances; environmental site assessment information; mineral rights; and an assessment of potential credits. A potential bank must have acquired land for the purposes of long-term conservation and management, and placed the land in a conservation easement or similar to guarantee long-term protection. ODFW, in consultation with a technical advisory group, reviews the potential mitigation bank information to confirm whether they meet the requirements to be an approved mitigation bank and to determine how many credits can be generated from the land, based on the ecological value of the land and land management opportunity.

If the bank is approved, credits can be approved and made available for purchase by applicants or certificate holders to mitigate for permanent habitat loss associated with their facility.

The mitigation bank manages the land into perpetuity, in accordance with a land management plan approved by ODFW, in consultation with the technical advisory group. The bank is responsible for monitoring and reporting to ODFW and credit purchaser.

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.”

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. At this scale, permittee responsible mitigation will become more challenging as mitigation sites of this size and greater, in proximity to the facility site, are limited.

APPROVED MITIGATION BANKS

As presented above, the process for reviewing a mitigation bank and approving credits is extremely rigorous and is designed to ensure successful habitat mitigation. To date, though, there is only one mitigation bank in Oregon that has been approved by ODFW, Terra West Consulting. There is also only one facility that has utilized the mitigation bank option, Boardman to Hemingway Transmission Line.

Many other state agencies and states have adopted mitigation banking as the mitigation requirement for impacts (i.e., it is the only available option for mitigation). Given the rigor of review and evaluation for a mitigation bank and credits, and the scale of mitigation needs for utility scale solar facilities, mitigation banking may become the best suitable option for applicants of solar facilities. The Department will continue to work with ODFW on their review of mitigation banks and their related policies to ensure current understanding of availability and challenges of this mitigation option.