



Oregon

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To: Energy Facility Siting Council

From: Tom Jackman, Rules Coordinator

Date: January 30, 2026

Subject: Agenda Item D: Tribal Communication Notice of Proposed Rulemaking Consideration (Action Item) for the February 13, 2026 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Rules
Attachment 2: Comments from The Confederated Tribes of Grand Ronde

STAFF RECOMMENDATION

Staff requests the Energy Facility Siting Council's (EFSC or Council) authorization for staff to issue a Notice of Proposed Rulemaking based on proposed amendments to its rules as shown in Attachment 1. Should it decide to do so, staff requests the Council's authorization to schedule a public hearing during the public comment period on these draft rules.

BACKGROUND

As part of the 2024-2026 Rulemaking Schedule, the Council directed staff develop rules designed to encourage early communication between developers and the nine federally recognized Tribes of Oregon. The intent is to increase the likelihood that cultural resources will be identified earlier, and developers will be in a better position to plan and proceed with projects with an understanding of these resources.

Staff attended two separate "Cultural Resource Cluster" meetings, on July 23, 2025 and January 28, 2025, to discuss with the Tribes in attendance the intent and goals of this rulemaking. Staff also solicited feedback on this rulemaking from the nine federally recognized Tribes of Oregon via letter on November 7, 2024 and again on December 19, 2025. The Confederated Tribes of Grand Ronde responded to the December 19, 2025 request and those comments are included as Attachment 2 and discussed below.

PROPOSED DRAFT RULES

The draft proposed rules would amend OAR 345-020-0011(q) (Contents of a Notice of Intent) to strengthen and clarify early communication regarding Tribal interests at the Notice of Intent stage of the EFSC review process. Specifically, the proposed amendments would add a new rule language requiring applicants to document early outreach related to potential impacts on historic and cultural resources.

Under the current rules, applicants are required to consult with the Legislative Commission on Indian Services to assist in identifying Tribes that may be affected based on the scope and location of a proposed facility. The draft rules would require applicants to attempt to initiate communication with those identified tribes prior to submitting a Notice of Intent and as part of the Notice of Intent they would be required to provide evidence of that outreach and communication, including the dates and summaries of meetings or communications, or documentation of attempts to initiate such communication.

The proposed rule does not establish new substantive standards for identifying, evaluating, or mitigating impacts to Tribal historic or cultural resources. Rather, it is procedural in nature and is intended to encourage early, informed communication so that potential Tribal concerns may be identified as early as practicable in the siting process. By focusing on the Notice of Intent stage, the draft rule seeks to improve transparency, coordination, and efficiency in later stages of EFSC.

The draft proposed rule language is included as Attachment 1 to this report.

COMMENTS SUBMITTED

The Department solicited comments regarding draft pre-notice language for proposed amendments to OAR 345-020-0011(1)(q) from all the federally recognized Tribes in Oregon and received written comments from the Confederated Tribes of Grand Ronde, included as Attachment 2.

The comments generally express support for the proposed rule concept and identify three specific points for consideration:

1. Clarification regarding whether the term “Indian historic and cultural resources” is defined elsewhere in rule, and if not, whether a definition should be developed in consultation with Oregon’s Tribes.
2. Support for the provision encouraging consultation with the Legislative Commission on Indian Services to identify appropriate Tribes for consultation.
3. Support for encouraging applicants to meet with identified Tribes and document those meetings, with the caveat that any information Tribes request to remain confidential should be redacted from records or summaries submitted to the Department.

Staff Response:

The Department appreciates the Confederated Tribes of Grand Ronde’s review of the draft pre-notice language and their support for strengthening early communication between applicants and Tribes.

The Department acknowledges the request for a definition of “Indian historic and cultural resources,” but does not believe an additional definition is necessary. Although OAR chapter 345 does not define this phrase, “cultural resources” is a well-established term in Oregon law and practice through statutes and rules administered by the Oregon State Historic Preservation Office and ORS chapter 358, which EFSC has historically relied upon when evaluating cultural

resource issues. The phrase “Indian historic and cultural resources” is intended to apply these existing frameworks in a Tribal context, rather than to create a new or distinct regulatory category. Because the proposed rule is procedural and focused on encouraging early communication with Tribes — not on establishing substantive standards for resource identification or evaluation — staff concludes that additional definitional language is not required, and no change to the proposed rule is recommended.

The Department concurs with and appreciates the Tribe’s support for encouraging applicants to consult with the Legislative Commission on Indian Services to assist in identifying appropriate Tribes for consultation. Staff views this provision as an important tool for improving the accuracy and completeness of early Tribal outreach, however, it is already required as part of the Notice of Intent stage.

Regarding documentation of early Tribal communication, staff agrees that protection of confidential Tribal information is essential. However, the intent of this new rule is to ensure that project applicants engage with potentially affected Tribal governments as early as possible. The documentation of those efforts in the Notice of Intent does not include the requirement to provide any specific details of their communications, especially the location of any confidential Tribal information. Should that information need to be included as part of the materials during the application stage, there are already confidentiality provisions for submitting and sequestering that information to ensure that it is not publicly available.