

Hearing - Day 1

**Council Review of Boardman to Hemingway
Transmission Line**

August 29, 2022



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OREGON DEPARTMENT OF ENERGY
ENERGY FACILITY SITE COUNCIL MEETING

Council Review of the Proposed Order/Proposed Contested
Case Order for the
Boardman to Hemingway Transmission Line

August 29, 2022
Day 1 of 3
4:01 p.m.

REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121,
Oregon CCR 22-0002

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1 APPEARANCES

2

3 OREGON DEPARTMENT OF ENERGY COUNCILMEMBERS:

4 KENT HOWE, Vice Chair

5 HANLEY JENKINS II

6 PERRY CHOCKTOOT

7 JORDAN TRUITT

8 CINDY CONDON

9 ANN BEIER

10 TODD CORNETT, Secretary

11 OREGON DEPARTMENT OF ENERGY STAFF:

12 KELLEN TARDAEWETHER

13 Senior Energy Facility Siting Analyst

14 SARAH ESTERSON

15 Siting Analyst

16 CHRISTOPHER CLARK

17 Siting Policy Analyst and EFSC Rules Coordinator

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21 FOR EFSC COUNCIL:

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1 APPEARANCES
(Continued)

2

3 FOR IDAHO POWER:

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15 KARL ANUTA

16 LAW OFFICE OF KARL G. ANUTA

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21

22 Also Present:

23 Nancy Hatch, DOE

24 Wally Adams, DOE

25 Irene Gilbert

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1 LA GRANDE, OREGON; AUGUST 29, 2022

2 4:01 P.M.

3 -o0o-

4 VICE CHAIR HOWE: Okay. Good evening and

5 welcome. The time is now 4:01 p.m. I'd like to call

6 the August 29th and 30th and 31st, 2022, meeting of the

7 Energy Facility Siting Council to order.

8 I want to thank all of you for your

9 attendance tonight. We appreciate you taking the time

10 and we're interested in your comments.

11 Mr. Secretary, are there any agenda

12 modifications?

13 SECRETARY CORNETT: Mr. Chair -- this mic --

14 test, test.

15 Can everybody hear me?

16 VICE CHAIR HOWE: Yep.

17 SECRETARY CORNETT: Okay. Maybe it's the

18 mask. Okay. So roll call.

19 Kent Howe.

20 VICE CHAIR HOWE: Here.

21 SECRETARY CORNETT: Hanley Jenkins.

22 COUNCILMEMBER JENKINS: Here.

23 SECRETARY CORNETT: Jordan Truitt.

24 COUNCIL MEMBER TRUITT: Here.

25 SECRETARY CORNETT: Cindy Condon.

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1 (No audible response.)
 2 SECRETARY CORNETT: Perry Chocktoot.
 3 COUNCILMEMBER CHOCKTOOT: Here.
 4 SECRETARY CORNETT: Ann Beier.
 5 COUNCILMEMBER BEIER: Here.
 6 SECRETARY CORNETT: Mr. Vice Chair, you have
 7 a quorum.
 8 VICE CHAIR HOWE: Okay. Thank you.
 9 And I jumped the gun there, and so are there
 10 any addenda modifications?
 11 SECRETARY CORNETT: Mr. Chair, I did hear
 12 from councilmembers earlier before the meeting that you
 13 would like to defer voting on the draft meeting minutes
 14 until tomorrow or Wednesday depending upon --
 15 VICE CHAIR HOWE: Right.
 16 SECRETARY CORNETT: So I guess we will defer
 17 that.
 18 VICE CHAIR HOWE: Okay. Thank you.
 19 I have the following announcements. Please
 20 silence your cell phones. Those participating via phone
 21 or webinar, please mute your phone. And if you receive
 22 a phone call, please hang up from this call and dial
 23 back in after finishing your other call.
 24 For those signed into the webinar, please do
 25 not broadcast your web cam.

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1 Reminder to the Council and to anyone
 2 addressing the Council to please remember to state your
 3 full name clearly and do not use the speaker phone
 4 feature as it will create feedback.
 5 For those testifying on the B2H agenda item,
 6 please use the "raise your hand" feature in Webex to
 7 speak or press "star three" to raise your hand if you
 8 are participating by telephone.
 9 You may sign up for email notices by
 10 clicking the link on the agenda or the Council web page.
 11 You are also welcome to access the online mapping tool
 12 and any documents by visiting our website.
 13 Energy Facility Council Meeting shall be
 14 conducted in a respectful and courteous manner where
 15 everyone is allowed to state their positions at the
 16 appropriate times. Consistent with Council rules and
 17 procedures, willful accusatory, offensive, insulting,
 18 threatening, insolent or slanderous comments which
 19 disrupt the Council meeting are not acceptable.
 20 Pursuant to Oregon Administrative Rule 345-011-0080, any
 21 person who engages in unacceptable conduct which
 22 disrupts the meeting may be expelled.
 23 So we're going to move the discussion over.
 24 The meeting minutes, to tomorrow or Wednesday. And
 25 we're ready for the Council secretary report.

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1 SECRETARY CORNETT: Thank you, Mr. Vice
 2 Chair.
 3 First, I have a staffing update. At the
 4 last Council meeting I had let councilmembers know that
 5 we had somebody who had accepted the Rulemaking
 6 Coordinator position, the Operations and Policy Analyst
 7 3 position who was intending to start on August 22nd.
 8 So, unfortunately, that person has elected
 9 not to accept the position and has chosen to pursue
 10 something else and, therefore, we have re-initiated the
 11 recruitment process for that position.
 12 In the meantime, Christopher Clark will
 13 continue to serve as the Rulemaking Coordinator, as he
 14 has in the last several months. So he will pull
 15 double-duty being a Siting Analyst as well as a
 16 Rulemaking Coordinator. So he will continue to move
 17 forward on the rulemaking projects as well as the
 18 assigned projects that he's working on. And so we thank
 19 Chris for his efforts on that.
 20 Next on my list are project updates.
 21 So on August 7th, the notice of intent for
 22 the Bonanza Energy Facility expired. So once a notice
 23 of intent is filed by an applicant, they have two years
 24 within which to submit a preliminary application. Prior
 25 to the conclusion of that two-year time frame, they can

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1 also submit a request for extension for one year to
 2 extend the notice of intent by one year, which means
 3 extending the ability to submit the preliminary
 4 application for site certificate for one year. Bonanza
 5 facility failed to either submit a preliminary
 6 application or a request for an extension. So that
 7 facility has expired or at least that notice of intent
 8 has expired.
 9 And the facility was proposed at 150 to 300
 10 megawatts. It was a solar energy project with up to
 11 1100 megawatts of battery storage, relating and
 12 supporting facilities. The project was proposed to be
 13 on 2700 acres, so 4.2 square miles. It was to be
 14 located in Klamath County near the town of Bonanza. And
 15 the applicant was Hecate Energy Bonanza LLC, which is a
 16 wholly owned subsidiary of Hecate Energy NAF, LLC. They
 17 have indicated their intention to resubmit a notice of
 18 intent in 2023. So we will wait to see if they do that.
 19 Second on my list is the Oregon Trail Solar
 20 Project. On August 19, 2022, we received a request for
 21 Amendment No. 1 for that facility. That amendment
 22 request includes two individual requests. The first is
 23 to extend the beginning construction date from August
 24 30th, 2022, to August 30th, 2025.
 25 So to -- they did not construct the facility

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1 within the time frame originally approved and are
 2 requesting a time frame extension for that.
 3 And the second request is to revise
 4 Condition 50 sub B to eliminate the requirement of a
 5 cultural resources monitor being present when ground
 6 disturbance occurs at depths of 12 inches or greater to
 7 requiring a cultural resource monitor being present when
 8 there is the initial open ground disturbance below 12
 9 inches associated with collection line trenching in the
 10 solar array.
 11 So that's a little bit nuanced, and so I
 12 just wanted to throw that out there. So you were kind
 13 of aware of it. But really, it's about, sort of, the
 14 presence of on-site cultural resource monitors during
 15 construction. They are requesting a change to that.
 16 They've also requested a type B review.
 17 The facility is approved to include any
 18 combination of wind and solar components not to exceed
 19 41 megawatts, including up to 14 -- excuse me, 16 wind
 20 turbines or up to 1,228 acres of solar PV generation
 21 equipment.
 22 And the entire site boundary is approved
 23 at 13,800 acres. The facility was originally part of
 24 the Montag Wind Power facility, but was split off from
 25 that facility through Amendment No. 5 in September of

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1 2020. That's why, when I described it, it's a rather
 2 small facility. It's because originally it was part of
 3 a much bigger facility and then they split the site
 4 facility into three.
 5 The applicant -- excuse me, the certificate
 6 holder is Oregon Trail Solar LLC, which is a wholly
 7 owned subsidiary of Avangrid Renewables, LLC, which the
 8 US division of the parent company, IBERDROLA.
 9 And I have one -- unless Council has any
 10 questions on either of my project updates, I have one
 11 more update.
 12 So there is a group called "Verde." It's
 13 currently working with Renewable Northwest and Thousand
 14 Friends of Oregon, and they just began pulling together
 15 a comprehensive stakeholder. They've called it a table,
 16 but essentially, you know, a group of diverse
 17 individuals and representatives from different areas to
 18 discuss the siting process in Oregon. And I'm quoting
 19 from their information.
 20 "How to address some of the frictions that
 21 are coming up between communities and developers and
 22 whether there are any changes that may be needed in the
 23 system to help address new policy goals, such as those
 24 established in House Bill 2021, but also to protect
 25 community self-determination."

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1 So it's a pretty diverse group: developers,
 2 the public, interest groups, state agencies, other
 3 natural resource groups. So it's a fairly large group.
 4 So -- just so I -- you have some
 5 understanding, Verde, the entity, their website states
 6 that its purpose is to serve communities by building
 7 environmental wealth through social enterprise,
 8 outreach, and advocacy. So that's the -- really the
 9 head of this group.
 10 Their group met on August 19th. It will
 11 again meet on September 2nd with additional meetings
 12 planned through the fall. The idea of the workgroup, as
 13 we understand it, is to seek input from a broad group of
 14 stakeholders in order to identify potential legislation
 15 for the 2023 session.
 16 The near-term goal is to have a placeholder
 17 study LC, legislative concept, submitted on
 18 September 23rd and spend time throughout the fall
 19 working to identify what should be included.
 20 There are legislators who are part of this
 21 who have been engaged including Representative Rayfield,
 22 Representative Marsh, Representative Brock Smith,
 23 Representative Owens, Representative Helm,
 24 Representative Pham, Representative Levy,
 25 Senator Lieber, Senator Findley, and Senator Dembrow.

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1 If any councilmembers would like to be
 2 included/invited -- it's not our group. We're not the
 3 lead. But if anybody is interested in tracking or being
 4 invited to that, we can reach out to the group leaders
 5 and see if we can get an invitation extended to any
 6 councilmembers who are interested.
 7 COUNCILMEMBER CONDON: Todd, just a question
 8 about Verde.
 9 Do they have experience pulling diverse
 10 groups together? Do you know? I mean, is this a common
 11 practice for them.
 12 SECRETARY CORNETT: I think so. I don't
 13 personally have much experience for them. But that's my
 14 understanding, is that's kind of their -- what they do.
 15 They are kind of a -- more of a grassroots organization
 16 seeking kind of broad -- you know, broad input. So
 17 that's my understanding.
 18 COUNCILMEMBER CONDON: And a follow-up, if I
 19 may.
 20 Is there anybody from the Department
 21 involved?
 22 SECRETARY CORNETT: Yes. The Department has
 23 been participating.
 24 COUNCILMEMBER CONDON: Thank you.
 25 SECRETARY CORNETT: Okay. Mr. Vice Chair,

1 with that, I will conclude my secretary report.
 2 VICE CHAIR HOWE: Thank you, Secretary
 3 Cornett.
 4 The next item is the Boardman to Hemingway
 5 transmission line. At the last meeting in July, the
 6 Council reviewed the standards from the proposed order
 7 that did not result in any contested case issues.
 8 This August meeting, the Council reviewed
 9 the standards from the proposed order that did result in
 10 contested case issues. We have Kellen Tardaewether,
 11 Oregon Department of Energy Senior Siting Analyst, and
 12 Jesse Ratcliffe, Senior Assistant Attorney General,
 13 Natural Resources Section of the Oregon Department of
 14 Justice, presenting and walking us through those
 15 standards this evening.
 16 So with that, I'll turn it over to
 17 Ms. Tardaewether.
 18 MS. TARDAEWETHER: Thank you, Vice Chair
 19 Howe.
 20 For the record, my name is Kellen
 21 Tardaewether, Oregon Department of Energy. I am trying
 22 to share my screen, so -- and normally through all of
 23 those introductions, we would have had a PowerPoint and
 24 a screen corresponding with all of those, but I'm having
 25 issues sharing my screen right now.

1 a lot of you have been -- have spent over a decade
 2 following and participating on this project. And we
 3 really appreciate it, that time and you all being here.
 4 And I'm sorry that my back is to you. But we can see
 5 you up here.
 6 So -- I'm just going to do an overview of
 7 what we're going to cover today. And then once we get
 8 this -- once we get it up, then we'll just kind of catch
 9 up.
 10 Is Council comfortable with me proceeding
 11 without the visual queues?
 12 Okay. The PowerPoint is also on the
 13 Department's web page so Council can kind of pull that
 14 up and go with it.
 15 Now, it might be a little bit different,
 16 because we just, you know, kind of rearranged some
 17 slides or done some edits, so the version may be a
 18 little bit different.
 19 So today we're going to continue with
 20 Council's review of the proposed orders for the Boardman
 21 to Hemingway Transmission Line Application for site
 22 certificate.
 23 I, as staff at ODOE, who are also -- and the
 24 Department is party to the contested case, which we're
 25 here today because the contested case has concluded and

1 So one minute, if we may, while we just try
 2 to troubleshoot this, and I may have somebody else share
 3 until I can figure this out.
 4 (Three-minute pause.)
 5 MS. TARDAEWETHER: I have the announcements.
 6 I have the PowerPoint on my screen here and we're going
 7 to work on getting it up here on the screen here. So
 8 thank you for being patient. This is the introduction.
 9 And here we are.
 10 So I'm going to do -- I know it's easier to
 11 have the visual representation, but I'll just do it
 12 orally just to kind of get us going here.
 13 I do want to -- again, Kellen Tardaewether,
 14 Senior Siting Analyst, Oregon Department of Energy. I'm
 15 up here with my colleague, Sarah Esterson, Senior Policy
 16 Advisor. We've been working on this project together
 17 for the duration of my time at the Department, which is
 18 six years. However, that is a short time compared to
 19 some of the folks that have been working on this
 20 project, Boardman to Hemingway transmission line from
 21 Idaho Power over here in the room. They've spent a lot
 22 of time.
 23 Equally as much, I'm just going to turn
 24 around and thank all you folks for showing up here
 25 tonight and welcoming us to La Grande. And I know that

1 now the ball is back in Council's court. So I'm going
 2 to be doing a presentation of the information in the
 3 proposed order.
 4 To the best of my ability and to the extent
 5 that we can separate it from a contested case-related
 6 issue, I'm going to be going over that information. And
 7 then Council will have an opportunity to deliberate, ask
 8 questions, and offer any changes to the materials that
 9 are generally unrelated to a contested case issue.
 10 And then Jesse Ratcliffe, Council's counsel,
 11 is going to take over and do an introduction of the
 12 contested case issue. He'll provide an overview and a
 13 variation of it. And kind of the format may change
 14 depending on the complexity of an issue or the amount of
 15 information submitted on an issue. But he's also going
 16 to provide an overview of that issue and what the
 17 hearing officer's proposed contested case order said.
 18 And then -- and then we'll go into exceptions filed
 19 related to that issue as it's framed in the proposed
 20 contested case order. And then there is also the
 21 opportunity to file responses to those exceptions to the
 22 proposed contested case order.
 23 So that's what we're going to be covering
 24 today. And then after that, Council will then have the
 25 opportunity to deliberate, ask questions, make any

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1 modifications to the proposed order or to the proposed
 2 contested case order.
 3 And then Idaho Power -- we understood that
 4 Idaho Power contracted with a court reporter.
 5 Can we get confirmation either in the room
 6 or that the court reporter is online? Okay.
 7 Okay. Can we put her as a panelist?
 8 Do you have her name?
 9 "Crystal." Okay.
 10 We want to make her a panelist, because if
 11 she's having -- if somebody needs to repeat or slow down
 12 or people are talking over each other -- okay. Okay.
 13 And then, Crystal, can you -- do you have
 14 the opportunity to -- to chime in whenever you need.
 15 Thank you. I was going to ask if you guys
 16 could hear me. Okay. I generally yell-talk anyway, so
 17 it's not a problem.
 18 We'll try to remind ourselves to all use our
 19 microphones.
 20 Okay.
 21 MR. RATCLIFFE: So we still haven't heard
 22 from Crystal. I do want her to be able to have the
 23 opportunity to chime in.
 24 Maybe, Crystal, if you can hear me, maybe
 25 you can -- Crystal, you can unmute yourself.

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1 THE COURT REPORTER: Can you hear me now?
 2 MS. TARDAEWETHER: Yeah. Okay.
 3 So, Crystal, as you're documenting the
 4 goings on here, please feel free, if something is
 5 unclear, just chime in since you're remote. Feel free
 6 to interject to get clarity on whatever you need for a
 7 good transcript of this -- these meetings.
 8 Okay. So after Jesse Ratcliffe goes
 9 over his items, Council will then have the
 10 opportunity -- questions/deliberations/modifications
 11 with the basis, and then -- then we'll do a straw poll
 12 on those items as well.
 13 And which still can't see -- we're still
 14 working on the presentation.
 15 So I have a very -- on the -- on the
 16 presentation, I have a very familiar chevron diagram of
 17 the major process steps. And I just kind of wanted to
 18 go over where we're at today.
 19 I wonder if they could just pull up -- it's
 20 just hard to do a presentation without your -- without
 21 everybody seeing it.
 22 Should I just keep on going?
 23 Do you guys see it on the screen?
 24 It's not going to work.
 25 One minute.

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1 (Pause)
 2 MS. TARDAEWETHER: Okay. All right. We're
 3 back on. So some of these slides are going to work
 4 well; some are not. I generally set up my presentation
 5 to have some animations. So some things may be covered
 6 up. So just bear with me.
 7 We are on slide 8, Nancy.
 8 So kind of going back in time, in July, we
 9 began Council's review of the proposed order.
 10 Now, but that -- for the issues that are not
 11 related to the contested case, but I'm going to touch on
 12 that in a little bit. Not going to spend a lot of time
 13 on this. But this is -- we're in -- we have these
 14 series of meetings because we're kind of bundling a lot
 15 of parts into these meetings.
 16 The Department held a series of meetings on
 17 the draft proposed order on the hearings after those.
 18 We issued the proposed order. It was -- it was in
 19 redline format, because those redlines demonstrated
 20 or -- or it was a way to highlight how the Department
 21 and the applicant responded to the comments that the --
 22 the public and agencies provided on the draft proposed
 23 order. So that's why the proposed order has those
 24 redlines in it.
 25 And then that proposed order is what went

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1 out and folks had an opportunity to request a contested
 2 case. If -- and basically -- just kind of summarizing
 3 that if their issue was not appropriately -- (audio
 4 disruption) -- or that they thought in the proposed
 5 order, then they could raise it in their position for a
 6 contested case. And -- and then there was the contested
 7 case.
 8 And now -- and then the output of that
 9 contested case was the hearing officer's proposed
 10 contested case order.
 11 And so before Council gets to this final
 12 order and site certificate -- or final order and final
 13 decision, we kind of have to go back in time for Council
 14 to understand everything that -- that came out of that
 15 contested case proceeding. But it also -- Council
 16 hasn't seen the proposed order, because the last time
 17 Council had this project in front of them for, you know,
 18 deliberation, input, modifications, was at its review of
 19 the draft proposed order. And Council looked a little
 20 bit different then. Some folks were there; some folks
 21 weren't there. Council did offer revisions and edits to
 22 conditions and items at that time. And those are also
 23 reflected in that proposed order. So this is where
 24 we're at today.
 25 Nancy, next slide, please.

1 Okay. Not going back in time, this is kind
 2 of a date-by-date summary of the recent history. We are
 3 going forward from 2010 and 2012. This is just to give
 4 an idea of the -- the bigger milestones towards the end
 5 of the contested case. The contested case lasted quite
 6 some time. The contested case itself had a lot of
 7 deadlines for all participating individuals and
 8 opportunities to respond to those deadlines and filings
 9 and motions and responses and it, itself, was a very
 10 time-intensive/labor-intensive process for the
 11 Department, Department of Justice, Idaho Power, but also
 12 for the members of the public and their representatives
 13 participating in the contested case.

14 So this is where we're at now. Okay. Next
 15 slide.

16 I love talking. So I'm just going to try to
 17 cut myself off and move forward. But as per usual,
 18 Council, if you have any questions, please -- or want me
 19 to slow down, just let me know. This is important. We
 20 just wanted to let folks know.

21 Council has received items in electronic
 22 versions and also in paper copies. Council does have a
 23 very large binder, which those were very hard to put
 24 together.

25 So -- sorry. I was crawling around on the

1 So it's predominantly a 500 kilovolt
 2 transmission line. However, there are some rebuilds and
 3 removals of other transmission lines. There's also a
 4 substation and communication stations and systems.

5 I don't have a slide for this but -- and we
 6 talked about these. I went into more detail primarily
 7 to update and familiarize newer councilmembers.

8 Councilmember Chocktoot, I'm sorry you
 9 weren't there in July, but I'm sure you've been looking
 10 at these materials. But I, basically, just gave a
 11 bigger, more detailed overview of the related and
 12 supporting facilities and the proposed facility,
 13 including, like, the transmission structures, et cetera.

14 So the related or supporting facilities
 15 associated with the Boardman to Hemingway Transmission
 16 Line are a series of roads. Roads are very important at
 17 the July meeting. We talked about how the applicant
 18 defined roads as using the Council's definitions of
 19 "substantially modified" as a way of deciding whether or
 20 not those are technically proposed by the applicant and
 21 included in the application is whether or not that they
 22 would be modified -- needed to be modified for
 23 construction or operation of the facility. And there's
 24 also new roads as well.

25 And there's also multi-use areas, pulling

1 floor. It's okay. We did it. So -- but it is in the
 2 format of the agenda today. So we understand that there
 3 may be some rearrangement or jumping around. We're
 4 going to do our best to stay on time, go with the flow.

5 That said, those time frames in the agenda
 6 are total estimates on how much just approximately we
 7 think it may take to go through that agenda item, which
 8 includes my part, Jesse's part, and Council's part, and
 9 any oral testimony on it.

10 So we're really just doing our best to get
 11 an idea of the schedule there.

12 The Council has received those items. We're
 13 going to do our best. And if Council needs help finding
 14 in your binder where something is or in the -- if you
 15 are using the electronic PDF, then we can help assist
 16 you. However, they are in the format of the agenda and
 17 Council has had those for a while.

18 Next slide, please.

19 Okay. So in July I feel like the proposed
 20 facility, as most are aware, is predominantly a
 21 500 kilovolt transmission line. However, the proposed
 22 facility -- and according to Council's definitions, a
 23 proposed facility is the energy facility itself and
 24 including all related or supporting facilities proposed
 25 by the applicant.

1 and tensioning sites, as well as some multi-use -- some
 2 of the multi-use areas and pulling and tensioning sites
 3 do have helicopter operations that could function out of
 4 them as well.

5 So that's the proposed facility.

6 The applicant requests -- and Council's very
 7 familiar with -- micrositing corridors.

8 A "micrositing corridor" is an area that is
 9 evaluated within the site boundary where -- that, if
 10 approved, an applicant could place any of the facility
 11 components in that area.

12 For this facility, the applicant is
 13 requesting that the site boundary function as the
 14 micrositing area. So they have a larger site boundary
 15 to where that -- well, let's just -- for the example,
 16 the transmission line, the site boundary for the 500 kV
 17 transmission line is 500 feet. However, the anticipated
 18 final right-of-way is going to be 200 to 300 feet. And
 19 so that means that they could move it around to
 20 microsite around resources or minimize impacts within
 21 that larger site boundary/micrositing corridor.

22 So the final right-of-way will be lesser
 23 than the actual site boundary. We'll talk about this
 24 later on, but the right-of-way in forested areas is
 25 300 feet, which is larger than, say, across, like, EFU

1 zone lands, and that's to make sure that there's
 2 adequate clearance for vegetation and trees.
 3 Next slide, Nancy, please.
 4 I noted that there are some alternatives on
 5 this slide. I really want to remind Council that the
 6 Council's process is different than the federal NEPA
 7 review, which may result in the lead federal agency
 8 offering, recommending, or imposing alternatives that
 9 are not necessarily proposed by an applicant. That can
 10 be an outcome of the federal review process. But
 11 that -- the Council does not have the authority to have
 12 that be an outcome. Statute tells Council that you're
 13 approving or denying an application for a site
 14 certificate. So what is proposed by an applicant is
 15 what is in the application.
 16 And -- and the question that's in front of
 17 Council is whether or not those routes -- all the routes
 18 meet or don't meet applicable Council standards. And it
 19 is possible that an outcome is that maybe one or two
 20 routes do, but maybe another alternative doesn't or they
 21 can be conditioned differently.
 22 That said, in the proposed order, the way
 23 it's framed is that under the standards, say the fish
 24 and habitat -- fish and wildlife habitat standard, we
 25 talk about all of them together. So all of your

1 the applicable Council standards, you know, as
 2 recommended in this order?
 3 So, really, under each standard that we talk
 4 about in the next several days, just in the back of
 5 Council's mind, you're looking at the language of the
 6 standard and then you're asking yourself -- and so I
 7 also talked about what the preponderance of evidence is.
 8 And so I'm just going to read this.
 9 "The proof by preponderance of evidence
 10 means the greater weight of evidence. And that facts
 11 asserted are more probably true than false. Thus, to
 12 issue a site certificate, Council must find that the
 13 evidence on the record demonstrates that it's more
 14 probable than not that an applicant will comply with
 15 applicable standards, statutes, and administrative
 16 rules."
 17 So as we go through this, Council, ask
 18 yourself, okay, I see the standard. And then asking is
 19 it more likely than not that the applicant, you know,
 20 with -- in the language of the standard -- that the
 21 applicant -- that it's likely, with mitigation language
 22 of the standards. Is it more likely than not that they
 23 could meet that?
 24 So, general standard, ultimately is what
 25 Council is going to be making their final decision on.

1 temporary and permanent impacts to fish and wildlife
 2 habitat for the proposed route and all of the routes are
 3 talked about in its totality, you know, unless there
 4 was, like, one area; for instance, you know, there's
 5 Washington ground squirrel really only occur in, you
 6 know, this one area in Morrow County where there are
 7 some of those alternatives. So some of these conditions
 8 would really only apply to those and not necessarily to
 9 a route or an alternative route that crossed Malheur
 10 County.
 11 Next slide, please.
 12 Okay. So these are the standards that we
 13 talked about in July, and that Council, you know,
 14 discussed, did straw polls. What I wanted to take a
 15 minute and pause on this, which we talked about in July,
 16 is that we did go over the general standard of review
 17 because underneath that standard is where there were,
 18 like, construction deadline -- deadlines, some mandatory
 19 conditions. But I told Council we're going to revisit
 20 general standard of review.
 21 The general standard of review -- Oand if
 22 Council looks at the very last page of your order, the
 23 general standard of review is the standard that says,
 24 Does the preponderance of evidence on the record
 25 demonstrate that the applicant" has -- has -- "can meet

1 But it does include all of the other standards.
 2 Okay. And I am going to pass it off to you,
 3 Mr. Ratcliffe.
 4 Next slide, please, Nancy.
 5 MR. RATCLIFFE: Okay. Just want to make
 6 sure that is coming through. Thank you, Kellen.
 7 Vice Chair Howe, members of the Council, for
 8 the record, my name is Jesse Ratcliffe. I'm an
 9 Assistant Attorney General with the Department of
 10 Justice. And my role here today is to advise the
 11 Council in legal matters in getting through this
 12 process.
 13 Patrick Rowe, my colleague, has been
 14 involved in this application heavily for quite some
 15 time. It has been the practice of the Council and the
 16 Department of Energy Staff for a number of years to have
 17 separate attorneys representing the Council and the
 18 Staff once we get to a contested case phase. That is
 19 not required under Oregon law; however, it is something
 20 that has been a practice for quite some time and that is
 21 the reason why I am up here presenting to you instead of
 22 Patrick.
 23 And so, you know, I think at the bottom, my
 24 role is to be a resource for all of you. I don't define
 25 the processes that we're going through here, but I am

1 here to be able to answer questions and I will -- on the
2 contested case issues, I will kind of kick things off by
3 giving a summary of the issue and what the hearing
4 officer decided before we hear the oral testimony from
5 folks who filed exceptions and from any responses that
6 parties may want to make.

7 So, again, Kellen walked through how we got
8 to where we are today. And since my role will be
9 dealing with the contested case issues, I just want to
10 briefly talk for another minute or two about what that
11 contested case process is.

12 It is a sort of mini trial. A somewhat less
13 formal trial, you know, with the kind of ideas that you
14 might have of that in terms of the ability to introduce
15 evidence, to provide testimony, and -- and to have an
16 independent hearing officer make a decision on the
17 issues before her.

18 And so that's what has happened here. We've
19 gone through a lengthy contested case with -- (audio
20 disruption) -- for a significant number of issues and a
21 significant number of parties. I've taken a lot of
22 testimony and -- and the hearing officer has reached her
23 decision on those issues.

24 And at the same time, you know, there's all
25 the substance that comes in. You know, the purpose --

1 is subject to confidentiality. That's the
2 attorney-client privilege.

3 The Council, as my client, in -- in this
4 process, can choose to waive that privilege. And
5 typically, that is what has happened in processes that
6 I've been involved in and serving in this role in the
7 past few years. It is not required. It is also not my
8 choice to make.

9 So if at any point the Council decides that
10 they want to hear advice from me that is for your ears
11 only and is subject to privilege, what I will need you
12 to do is have someone, you know, raise their hand, you
13 know, let me know, "Hey, I've got a question," you know,
14 "I think that this may pertain to the" -- the, you know,
15 "particular risk of making a decision this way or that
16 way, and how that might play out on appeal."

17 And then we'll kind of stop for a minute,
18 talk about what options are, and whether or not that is
19 something that a particular piece of advice gets
20 delivered outside of the public meeting.

21 And again, even though the general practice
22 of the Council the past -- at least the past few years,
23 has been to do this all, you know, for the most part out
24 in the open, we have had instances where that has been
25 the Council's choice to, you know, do that. And that is

1 sorry. I'm going to really have to lean in close here.

2 The purpose of the trial, fundamentally, is
3 to take substantive evidence. You know, so if we have
4 a -- a fish and wildlife habitat issue that we get
5 evidence and testimony in pertaining to that issue.

6 But as with all trials, there's also a fair
7 bit of procedure that goes along with that. In terms of
8 the way in which that testimony can be taken. Kind of,
9 you know, benchmarks for the reliability of that
10 testimony, deadlines that need to be hit so that it
11 remains an organized process.

12 And so the first thing that I'm going to be
13 doing here today is -- after I conclude this kind of
14 introductory section, is to talk a little bit about the
15 procedural exceptions that were filed in this case. So
16 concerns about not -- the substance of has the applicant
17 met a particular standard or not, but under the rules
18 and statutes that apply to the hearing, to the contested
19 case hearing, were they followed appropriately?

20 So I'll be getting into that in a second
21 here. The last thing I want to talk about before I do
22 that is the process that we have set up is this is
23 taking place in an open public meeting. Ordinarily, you
24 know, or commonly, when anyone asks their attorney for
25 advice -- and I'm your attorney for this process -- it

1 a very common practice with -- with other boards and
2 commissions to be able to take advice outside the public
3 meeting.

4 But that is, you know, a component of what
5 my role is today is to, you know, provide the sort of
6 advice that might ordinarily be privileged.

7 So with that, I think that kind of covers
8 what, you know, my role is. You know, how this process
9 is going to take place.

10 The first set of issues that I want to get
11 into, again, are the procedural ones. And this is going
12 to immediately bring up a process point for the meeting,
13 because on the substantive exceptions that were timely
14 filed, the proposal on the table is to allow the parties
15 to have oral argument time on their exceptions.

16 The idea with that is really, you know, by
17 and large, the exceptions process is on paper. And in
18 complex cases like this one, that makes good sense.
19 You're, you know, having -- the party has the best
20 opportunity to, you know, get their thinking down in
21 writing and present that to the Council for review.

22 However, it is permissible, and the proposal
23 on the table is with respect to the substantive issues
24 to allow the -- both the party who filed the exception
25 and then any responding party, be it either the

1 Department of Justice Staff or Idaho Power, to have a
 2 short period of time to kind of highlight some of the --
 3 the issues that they want to in oral argument.
 4 The proposal is for that to be a
 5 three-minute period for each exceptor. Some issues will
 6 have more than one person who has filed an exception.
 7 In that case, each individual person who
 8 filed an exception will have their three minutes to
 9 talk.
 10 And then similarly, the Department of Energy
 11 staff and -- and Idaho Power would have three minutes.
 12 That time -- and we have had a couple of
 13 requests, which I forwarded to you all, to extend that
 14 time. That is at your discretion. Of course, you know,
 15 the additional time is additional meeting length. We do
 16 have a lot to get through, but that is something that
 17 the Council could take up if it wants to.
 18 On the procedural issues, again, the
 19 proposal is not to have oral argument on those, to focus
 20 on the -- the paper, the written exceptions that were
 21 filed. And the reasoning, in part, is because we do
 22 have a lot to get through.
 23 And, fundamentally, the -- you know, the
 24 process here is to determine whether or not the
 25 applicant has met the substantive standards before you.

1 new information can be provided anyway.
 2 COUNCILMEMBER BEIER: Just so the public
 3 understands, we do have these amazing books full of your
 4 written testimony. And we were allowed to get these in
 5 time to get through them. So we -- I think the idea to
 6 really -- in your oral testimony -- highlight what you
 7 want us to hear would be very helpful.
 8 And a shout out to the Department of Energy
 9 Staff for the amazing production effort to get these
 10 materials to us in a timely manner.
 11 Just know we take this -- we have a
 12 responsibility here and we were given the tools to
 13 really dig into your testimony.
 14 So think about how you want to summarize it
 15 for us and hit those high points. Thank you.
 16 VICE CHAIR HOWE: Any other comments?
 17 Okay. We're ready to proceed.
 18 MR. RATCLIFFE: Okay. So -- and speaking of
 19 that very fine binder, of which we will be speaking
 20 about a lot over the next few days, the place where the
 21 procedural issues are to the front of the materials.
 22 And it looks like a couple of you have them in separate
 23 binders, which is great.
 24 And the -- we had procedural challenges that
 25 were specifically filed by Stop B2H and Irene Gilbert.

1 But, again, you know, I -- I want to go
 2 ahead and set this out in case any councilmember feels
 3 like there's a need for discussion on the proposal of
 4 how this is going to work in terms of -- of discussion
 5 of the contested case issues.
 6 If there's a need for discussion on that, I
 7 will turn the floor over and we can have that
 8 discussion. Otherwise, what I'll do from here is move
 9 into the procedural exceptions that were filed.
 10 VICE CHAIR HOWE: Comments from Council that
 11 you want to discuss before we move on into explanation
 12 of the procedures?
 13 COUNCILMEMBER JENKINS: This is Hanley.
 14 You know, I support the proposal for the
 15 three minutes because we have a lot of exceptions and
 16 responding parties, and so --
 17 VICE CHAIR HOWE: Also, in agreement with
 18 that. We have all the written testimony, and there's no
 19 new information that can be submitted, so -- and they've
 20 had opportunity for their oral comments back when we
 21 were here three years ago on the four meetings that we
 22 had, as well as before the hearings official.
 23 And so I think the three minutes is adequate
 24 for them to emphasize anything they want to bring our
 25 attention to in the written comments that we have and no

1 And then we also have a couple of challenges aside from
 2 that that are objecting to how a particular contested
 3 issue was framed by the hearing officer. Which, again,
 4 is itself a procedural issue. The hearing officer is in
 5 charge of the hearing, including the -- you know, the --
 6 the definition of those issues.
 7 So I -- I am going to be doing a little bit
 8 of jumping around here. I apologize for that.
 9 But there are a number of issues that were
 10 raised by both Stop B2H and Ms. Gilbert. And as a
 11 result of that, I will -- to kind of keep things
 12 organized that way -- need to be moving back and forth a
 13 little bit.
 14 So the first of these issues that were
 15 covered by both Stop B2H and Ms. Gilbert has to do with
 16 the type of party status that was granted to folks who
 17 are participating in the contested case. And the
 18 Councilmembers may recall that we had an extensive
 19 discussion of this and a decision by the Council on this
 20 issue previously.
 21 But just as a reminder and for those in the
 22 room, that is the difference between what is referred to
 23 as a "limited party" under the Council's rules and the
 24 Oregon Administrative Procedures Act and a "full party."
 25 And -- and the, you know, basic concept here

1 is that the -- the limited party has the ability to
2 participate on the specific issues that they timely and
3 appropriately raised, rather than coming into the
4 contested case part process and, sort of, participating
5 on anything that they see fit at that stage.

6 And the Council's decision came about
7 because a number of parties earlier on in the process --
8 after the hearing officer had made her initial decision
9 on party status, a number of parties appealed those
10 decisions to the Council, which is provided for in the
11 Council's rules.

12 For the most part, the idea is we try to get
13 through the contested case process without bringing it
14 to you. But there are a couple of exceptions -- and
15 that is one of them -- to hear appeals on the definition
16 of issues and, in this case, on the nature of their
17 party status, whether they are full or limited parties.

18 So the Council heard extensive arguments on
19 that and reached a decision that then has carried
20 forward through the rest of the contested case, which is
21 that if a party raised an individual issue in a timely
22 fashion on the record of the draft proposed order,
23 raised that with sufficient specificity, then that party
24 has the ability to continue forward with that issue. If
25 they raised multiple issues that got in, they can

1 bit of a highlight summary of what's come before on the
2 issue and then -- then where things stand, legally
3 speaking.

4 And so I'm going to stop on this one and see
5 if there are any comments/questions. I'll answer those.

6 What I'm going to do after that, then, is
7 keep going through these procedural issues. I'm going
8 to be taking notes -- if you have questions/comments/
9 concerns.

10 Once we get to the end of this process of me
11 walking through these procedural issues, if it appears
12 that there are things that we need to cycle back on
13 and -- and -- and potentially look at the idea of making
14 changes on -- to the proposed contested case order, then
15 we'll bring those up.

16 And we'll end up with kind of a straw poll,
17 which is, again, not a final decision. It is the sense
18 of the Council right now as to where we stand on those
19 issues.

20 So with that, I will stop talking here for a
21 minute and see if there are any questions, specifically,
22 on this limited-party status issue.

23 VICE CHAIR HOWE: It doesn't look like there
24 is.

25 MR. RATCLIFFE: Okay. So the next issue

1 participate in multiple issues, but the parties were
2 not, kind of, allowed to crossover into other issues
3 that they, themselves, did not raise.

4 So both Stop B2H and Ms. Gilbert have filed
5 written exceptions to that raising a number of the
6 arguments that had been heard by the Council at the
7 earlier stage.

8 And so, again, you know, this will be the
9 first time that I'm doing this, but, you know, as part
10 of my role in this process, you know, it's to give the
11 Council a read on where you stand legally, you know, so
12 if this were taken to the Oregon Supreme Court on an
13 appeal on a final site certification, how would you be
14 looking on that issue?

15 And on this particular issue, again, this
16 was the subject of extensive briefing and also my
17 advice -- which hasn't changed from that period of
18 time -- which at the time was that the statutes and
19 rules allow the Council to provide for this
20 limited-party status.

21 And so the hearing officer's approach to
22 doing that and the Council's affirming that decision by
23 the hearing officer are procedurally appropriate.

24 And so what I'm going to do on each one of
25 these is -- is, essentially, just this. So what I -- a

1 that I'm going to go to is one that was raised by
2 Ms. Gilbert that is the compliance with a statute under
3 the Oregon Administrative Procedures Act. It's Oregon
4 Revised Statutes 183.470(2). And the contention and the
5 exception is that this procedural statute hasn't been
6 complied with.

7 And the statute itself deals with the final
8 order in the contested case.

9 The statute that she references states that
10 "A final order shall be accompanied by findings of fact
11 and conclusions of law."

12 It goes on to talk about what those findings
13 of fact look like. And the -- the key point here in
14 response is that we haven't reached a final order yet.

15 Ms. Gilbert is absolutely correct that every
16 final order that's issued by a state agency needs to
17 meet this. And the -- before all is said and done here,
18 no matter what the outcome of the site certificate
19 decision is, a final order that meets those requirements
20 will need to be prepared. The Department Staff will
21 assist you in the preparation of that. So we will get
22 there, but we're not there yet.

23 And so I don't have anything else on that.

24 But, again, we'll pause for questions.

25 VICE CHAIR HOWE: Questions from the

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1 Council?
 2 None so far.
 3 MR. RATCLIFFE: Okay. The next issue that I
 4 want to talk about is one that was raised by Stop B2H.
 5 And this exception concerned the timeliness of the
 6 filing of recommended conditions.
 7 And so one of the parts of the -- the
 8 process that is specific to the Council statutes is the
 9 ability of parties -- oh, thank you -- to raise the
 10 need, as far as they see it, for a specific condition
 11 that the site certificate should include.
 12 The hearing officer had made a statement in
 13 the proposed contested case order that was not accurate
 14 entirely on this issue.
 15 And this is one where my recommendation is
 16 that the proposed contested case order should be
 17 corrected before we get to a final order.
 18 And -- and that's to acknowledge that all
 19 conditions that were proposed by the closing argument
 20 deadline were timely and should be considered.
 21 So what the hearing officer had done is
 22 excluded some of those proposed conditions as untimely.
 23 Now, if she had stopped there, the Council
 24 would have more of a lift on this procedural issue,
 25 because we would then need to be talking about what each

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1 of those conditions were; how to address the fact that
 2 they were excluded. Fortunately, the hearing officer
 3 went on to consider the merits of -- of those proposed
 4 conditions anyway.
 5 So while it is an error on the hearing
 6 officer's part to have said that the -- the proposed
 7 condition should be excluded from the process, she
 8 considered them anyway.
 9 And so this then becomes kind of a technical
 10 fix to the proposed contested case order to acknowledge
 11 that they were, in fact, timely and -- and that the
 12 hearing officer did, in fact, choose to consider them.
 13 That's all I have on that one.
 14 VICE CHAIR HOWE: Questions or comments?
 15 COUNCILMEMBER JENKINS: -- this is Hanley.
 16 No, Chair.
 17 MR. RATCLIFFE: Okay. The next procedural
 18 exception.
 19 This is one raised by Ms. Gilbert and is
 20 referred to hearing officer decisions on discovery and
 21 witness cross-examination.
 22 So these are two of the trial-type
 23 procedures that get used in a contested case.
 24 "Discovery" is the ability to ask another
 25 party in the case for records that are relevant or may

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1 lead to relevant information. There's a -- a set of
 2 rules that govern that discovery process.
 3 Similarly, the ability to cross-examine a
 4 witness is fundamental to trial-like procedures in the
 5 United States, both in courts and administrative
 6 proceedings and -- so that's a component of these
 7 hearings.
 8 So on -- on this particular issue, having
 9 reviewed this, the -- the argument is essentially that
 10 certain witnesses did not adequately respond -- or
 11 potential witnesses, I guess I should say -- potential
 12 witnesses did not adequately respond to discovery
 13 requests that were made of them and, therefore, there
 14 was a request to cross-examine those witnesses.
 15 This one gets a little bit technical. But
 16 the -- there is a process for compelling discovery. If,
 17 you know, a party feels that that was not adequately
 18 responded to and the -- basically, the request for a
 19 witness to appear as a -- for cross-examination wouldn't
 20 be the appropriate next step in the process, we want to
 21 work through these issues before we get to the hearing
 22 and -- and so that's -- that's what would have needed to
 23 have happened.
 24 And so the hearing officer's decision
 25 fundamentally to say, well, this isn't the right remedy

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1 here to have this person show up for cross-examination.
 2 We would have needed to see more of a demonstration of
 3 precisely what it was that was not provided and why that
 4 should have been provided. That having looked at that
 5 my -- my recommendation is that the hearing officer
 6 handled that one correctly.
 7 VICE CHAIR HOWE: Is there questions?
 8 Okay. Continue. Thanks.
 9 MR. RATCLIFFE: Sure.
 10 Another procedural exception filed by
 11 Ms. Gilbert pertains to the hearing officer's filing
 12 requirements and her method for managing the record.
 13 And Ms. Gilbert had proposed a different
 14 system for referring to documents in the contested case
 15 process. The hearing officer declined to adopt that.
 16 It is a part of the hearing officer's
 17 responsibilities to manage the record. I, you know,
 18 freely acknowledge having been involved as an advocate
 19 in cases of this size before. You know, it's a
 20 challenge. And whatever ends up getting picked, you're
 21 still going to end up running into difficulties with.
 22 However, what the hearing officer did was
 23 use a commonly accepted means for managing a record of
 24 this size, requiring kind of a uniform process for
 25 referring to documents. And so there -- that decision

1 is fundamentally something that's within the hearing
2 officer's discretion to figure out and -- and -- and,
3 you know -- and she chose an appropriate method.

4 Okay. Let me scroll here for a second.

5 So we have a related exception from

6 Ms. Gilbert that points to a statute that requires the
7 hearing officer to conduct a full and fair hearing. And
8 that reference shows up in Oregon Revised Statutes
9 183.615.

10 And -- and this ties back into an earlier
11 part of the contested case process where Ms. Gilbert had
12 filed a motion requesting the removal of the hearing
13 officer.

14 That was something that the -- was taken up
15 by the Council and the Council decided not to remove the
16 hearing officer. That motion contained a number of --
17 of similar objections. The full and fair hearing, you
18 know, as you can tell, kind of, by the phrasing, it's
19 not a particularly specific requirement. Yet, under
20 Oregon law it has, you know, including certain baseline
21 requirements, and a lot of those are the processes that
22 show up within the hearing -- an opportunity for
23 discovery, taking testimony from witnesses, the filing
24 of exhibits, that sort of thing.

25 And the Council's rules, helpfully here,

1 part of the hearing and then ends up weighing that as
2 she discusses how she is ruling on a particular issue.
3 That's not the only way of writing a proposed contested
4 case order, but it is an acceptable way of doing that.

5 And so my recommendation on that one is
6 that, again, she chose an acceptable method.

7 Okay. I have just a couple of these left to
8 go here and just want to make sure that I'm taking them
9 in an order that roughly makes sense.

10 Okay. So the next one has to do with an
11 issue that the Council has similarly heard about a
12 number of times throughout this process filed by
13 Ms. Gilbert and that pertains to the rules that are used
14 in this process.

15 And so this is one that the Council has
16 heard before, so I will try to make this short. But
17 basically, several years ago the Council determined that
18 in order to get consistent high-quality hearing officers
19 to hold these contested case hearings, the historic
20 practice had been to do RFPs; basically, to go out and
21 find an independent contractor to hold the hearings.

22 Because we had run into issues with a couple
23 of hearing officers by that method, what the Council
24 then decided to do is to shift over and start using
25 hearing officers from the Office of Administrative

1 actually do provide a little bit more illumination on
2 what that looks like, because they spell out what the
3 duties of the hearing officer are. And the hearing
4 officer, you know, has hit each one of those duties
5 throughout the process.

6 So again, at the time, the Council decided
7 not to remove the hearing officer; that she was
8 providing that opportunity for a full and fair hearing.

9 One more related one on that note is an
10 objection by both Stop B2H and Ms. Gilbert as to the
11 format of the proposed contested case order.

12 So having gotten through, you know, the
13 earlier trial-type procedures, we got to the point where
14 the hearing officer wrote the order. And the -- again,
15 as I referenced earlier, Ms. Gilbert's citation to a
16 statute requiring that there be findings of fact and
17 conclusions of law, again, that is absolutely a
18 requirement. However, the formatting of how that gets
19 done specifically is left to the discretion of the
20 hearing officer. The hearing officer here did include
21 extensive findings of fact, used those to support
22 conclusions of law.

23 Now, many of her findings show up in the
24 opinion section, so, you know, she frequently has listed
25 some of the evidence that was entered into the record as

1 Hearings, which is the state body that hold most of the
2 contested case hearings in the state.

3 And as part of that, though, there is a
4 technical issue where any agency that chooses to use
5 those hearing officers from the Office of Administrative
6 Hearings ordinarily has to use the rules that -- the
7 Attorney General's Office provides that as sort of a
8 standardized process.

9 That has a number of exceptions, though.
10 There are a number of agencies whose application
11 processes are unique enough that the -- that there is an
12 exception from the use of the Office of Administrative
13 Hearings; and, therefore, an exemption from the use of
14 those rules.

15 The Council is one that the legislature
16 decided should be exempted. And for that reason, when
17 the Council, nonetheless, decided to use the Office of
18 Administrative Hearings for hearing officers, there was
19 a request made to the Attorney General to have an
20 exemption from that rule and to allow the Council's
21 rules, which have historically been applied to every
22 application that has come before the Council, to
23 continue to have those rules apply.

24 And the hearing -- the Attorney General
25 granted that request. Ms. Gilbert has objected to

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1 the -- the use of -- continued use of the Council's
 2 rules instead of the Office of Administrative Hearings'
 3 rules.
 4 And the main point here is that the
 5 exemption decision, while requested by the Department of
 6 Energy and the Council, it's ultimately the Attorney
 7 General's decision. An objection to that decision would
 8 be made with the Attorney General. And at this point,
 9 that's not really within the Council's jurisdiction.
 10 So -- and, you know, once again, just to be
 11 clear about this, the rules -- as a result, the rules
 12 that have been applied in this contested case process
 13 are the same rules. They are the Council's rules that
 14 have been applied in every application that has come
 15 before the Council before.
 16 So then we have a number of issues where
 17 folks have filed exceptions that were based on the way
 18 that their issue statement was framed; and that is
 19 included as a part of this initial presentation, because
 20 the Council has already considered how those issue
 21 statements were handled.
 22 But because folks filed exceptions on these,
 23 I wanted to at least bring it to the Council's attention
 24 that there are some folks who maintain their objections
 25 to the way that the contested case issues were framed,

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1 and that includes Michael McAllister. Mr. McAllister's
 2 exception is to the dismissal of his issue earlier on in
 3 the proceeding that argued that the EFSC review must be
 4 consistent with the Bureau of Land Management's NEPA
 5 review, the National Environmental Policy Act.
 6 That issue was dismissed because --
 7 basically, because the Council is bound to follow its
 8 own statutes and its own rules, not separate federal
 9 statutes.
 10 This was addressed on the -- the appeal to
 11 the Council on issue statements. And while there is a
 12 Council statute that encourages the Council to work,
 13 where possible, with its federal partners, that only
 14 goes so far as the law allows. Council doesn't have the
 15 authority to say, "adopt NEPA." There's no
 16 authorization for that.
 17 So that's the basis for that dismissal.
 18 The remainder of these filled by Ms. Geer
 19 contending there were incorrect summaries of Fish and
 20 Wildlife 3 and Fish and Wildlife 6; Ms. Gilbert
 21 pertaining to issues MC-2, HCA-3 and part of Fish and
 22 Wildlife 3; and then -- and Kevin March pertaining to
 23 Fish and Wildlife 7.
 24 Again, each of these objections were heard
 25 on the appeal to the Council earlier on. The parties

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1 maintain those objections. But again, the Council has
 2 ruled on them.
 3 So that is a lengthy list. I apologize for
 4 the amount of time involved in that, but that is
 5 necessary to walk through each one of those.
 6 And so unless there are any other questions,
 7 what I would like to turn to now is just simply a very
 8 basic straw poll to get the sense of the Council as to
 9 whether anything that you've heard so far bears
 10 correction of the proposed contested case order or
 11 requires any additional process other than what we're
 12 going through over the next few days.
 13 As a reminder, the one change, as I went
 14 through, the procedural exceptions that I do recommend
 15 be made is that the proposed contested case order be
 16 corrected to acknowledge that all conditions proposed by
 17 closing argument deadline were timely and -- and, you
 18 know -- and that these ended up being addressed by the
 19 hearing officer.
 20 That's the type of correction to the
 21 proposed contested case order that -- should the Council
 22 decide to pursue that recommendation that then Staff can
 23 turn around and prepare for you to look at at the
 24 following meeting.
 25 VICE CHAIR HOWE: Questions up to this

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1 point?
 2 COUNCILMEMBER JENKINS: So Jesse -- yeah.
 3 This is Hanley.
 4 Jesse, how do you want to do the straw poll?
 5 MR. RATCLIFFE: Yeah. I think what I would
 6 like to hear, basically -- and these can be very
 7 informal. You know, there's no particular motions that
 8 need to be made or anything.
 9 But, you know, a Council member can simply,
 10 you know, raise their hand and say it's my view that
 11 here's what I think we ought to do and we can go around
 12 and -- and see. Folks can raise hands or however they
 13 want to handle it.
 14 And then if there's anything that seems to
 15 generate discussion from that, if we have, you know --
 16 if we don't have unanimous consent and a councilmember
 17 wants to make a comment; then, great, we'll take the
 18 time to do that.
 19 But the overall point is that this is
 20 informal because we're not making a final decision.
 21 We're just trying to get a sense of where we're at now.
 22 COUNCILMEMBER JENKINS: Okay. So -- thank
 23 you, Mr. Chair.
 24 So I agree with your proposal of the one
 25 change. And on the other issues -- but if someone has

1 some discussions, I'm happy to entertain that.
 2 VICE CHAIR HOWE: Thank you.
 3 SECRETARY CORNETT: If councilmembers would
 4 like, I could call roll. So there's a formal, on the
 5 record, if that's -- but as Jesse said, that's entirely
 6 your choice.
 7 VICE CHAIR HOWE: What's the Council
 8 druthers here? Do a formal roll call? Yeah. Okay.
 9 And I'll go ahead and say, Mr. Ratcliffe,
 10 that all the filings on the procedural issues, I'm in
 11 agreement with the way they've been dealt with in your
 12 statements that you walked us through right then. So
 13 I'm comfortable with that.
 14 COUNCILMEMBER CONDON: Cindy Condon. And I
 15 also agree. Thank you.
 16 COUNCILMEMBER BEIER: Ann Beier. And I'm
 17 also comfortable making sure we catch the nuance on the
 18 change you're recommending that the -- the -- it's not
 19 the exceptions, the -- the opening.
 20 MR. RATCLIFFE: Yeah. There's a lot of
 21 jargon here and so this is the conditions. The
 22 proposal --
 23 COUNCILMEMBER BEIER: The conditions were
 24 timely filed and that the hearings officer considered
 25 them. I think that's important to show in the record.

1 process. The hearing officer made a decision, a
 2 proposed decision. If parties continue to have
 3 objections after that decision is made, the expectation
 4 is that the best way to approach that is to -- you know,
 5 a legally provided way to approach that is to file an
 6 exception.
 7 So absent an exception being filed, you
 8 know, the general thought is that, well, okay, you know,
 9 we may no longer have a live issue here; this may have
 10 adequately disposed of in the contested case.
 11 And, frankly, that's kind of the hope going
 12 through, is that you start narrowing down on the issues.
 13 So this slide talks about issues that were
 14 either dismissed on summary determination by the hearing
 15 officer or that were included in her proposed contested
 16 case order, but no one filed exceptions.
 17 VICE CHAIR HOWE: Questions from Council on
 18 the 25 issues that were dismissed on motion for summary
 19 determination?
 20 COUNCILMEMBER JENKINS: So do we need to do
 21 a straw poll on those? This is Hanley.
 22 MR. RATCLIFFE: That's entirely up to you.
 23 If -- if you would like to, that's fine. If -- you
 24 know, again, this is kind of however you would like to
 25 do this one. I think the main thing is that the staff

1 Thank you.
 2 COUNCILMEMBER TRUITT: George Truitt. I
 3 agree with our fellow councilmembers.
 4 VICE CHAIR HOWE: Councilor Chocktoot.
 5 COUNCILMEMBER CHOCKTOOT: I also great.
 6 MR. RATCLIFFE: Okay. Thank you, Vice Chair
 7 and councilmembers. So with that, I'm going give my
 8 voice a break and turn it back over to Ms. Tardaewether.
 9 MS. TARDAEWETHER: For the record, Kellen
 10 Tardaewether.
 11 Nancy, will you go to the next slide?
 12 Jesse, I'm not sure if you wanted -- this is
 13 like an overview of where there were -- anyhow, I'm not
 14 sure if there's anything you wanted to say on this
 15 slide.
 16 MR. RATCLIFFE: Yeah. So, I guess, the only
 17 thing I will point out here -- and thank you, Kellen --
 18 is that we did have a number of issues where no
 19 exceptions were filed.
 20 So -- and, procedurally speaking, the -- the
 21 councilmember -- the councilmembers are welcome to have
 22 discussion on any of these issues.
 23 But, generally speaking, you know, the way
 24 that decision-making bodies will kind of look at things
 25 is to say, well, we've gotten through the contested case

1 and I need to know, you know, by the end of the process
 2 where the Council is at so that if there are any changes
 3 to the proposed contested case order that need to be
 4 made or any additional process that we need to go
 5 through, that we know about it.
 6 So, you know, if -- if, you know, you would
 7 like to hear more about one of these issues, great. If
 8 everyone is comfortable with where they are at, you
 9 know, you can speak up and we can go from there.
 10 COUNCILMEMBER JENKINS: Yeah. I'm fine with
 11 25 that Kent mentioned. Issues that were dismissed.
 12 VICE CHAIR HOWE: Not hearing any other
 13 comments from any of the other councilmembers, then, I
 14 think the position of the Council is we're okay with
 15 those 25 issues dismissed.
 16 Unless, Mr. Chocktoot, do you have any
 17 concerns? Questions?
 18 COUNCILMEMBER CHOCKTOOT: No, I do not.
 19 MR. RATCLIFFE: And sorry. I apologize.
 20 Before we move on, I just -- I believe that there may
 21 have been a typo on -- on this.
 22 We have one issue that actually will be
 23 showing up in the exceptions process, an exception that
 24 was filed, and that's SR-6. So I apologize for that.
 25 MS. TARDAEWETHER: Okay. Thank you,

1 Mr. Ratcliffe.
 2 For the record, Kellen Tardaewether.
 3 Nancy, will you go to the next slide,
 4 please.
 5 So, again, I'm -- as staff to Council and at
 6 the Oregon Department of Energy, I'm going to be
 7 providing an overview, to the best that I can, delineate
 8 and separate aspects of the proposed order from the
 9 contested case issues.
 10 I'm going to be presenting material that's
 11 in the proposed order, which is a, you know, summary and
 12 reflection of how the preponderance of evidence
 13 indicates that an applicant has met applicable Council
 14 standards with mitigation. But that's all derived from
 15 the application from site certificate.
 16 So as, per usual, Council is used to us
 17 telling you this.
 18 Once we get in front of you, everything is a
 19 series of "boiling down a lot of information."
 20 The application for site certificate was
 21 over 22,000 pages. The proposed order without
 22 attachments, I think, is 6- or 700. With all the
 23 attachments, it's about 10,000 pages. Everything is
 24 voluminous.
 25 So, again, trying to -- it is very hard for

1 We're going start off with the structural
 2 standard, and so the analysis area under Council's
 3 definitions for the structural standard is the area
 4 within the site boundary. We talked about the site
 5 boundary earlier.
 6 Now, the applicant actually went beyond the
 7 area in the site boundary for -- particularly with
 8 seismic hazards, went out -- out to a hundred miles. It
 9 kind of corresponds with the magnitude, stronger
 10 magnitude, they went further distances.
 11 So it went out for -- for -- seismic
 12 earthquakes went out to a hundred miles. But then for
 13 all other, like, non-seismic hazards, the applicant
 14 actually went out and evaluated out to a half a mile
 15 from -- the site boundary and a half a mile out.
 16 So then we're going to try to focus on the
 17 language of your standard; right? What is it asking?
 18 It's asking, did the applicant adequately
 19 characterize the site for seismic and non-seismic.
 20 And then, can the applicant take that
 21 information and represent with mitigation or conditions
 22 that it can design, construct, and operate the facility
 23 in a manner that protects public health and safety and
 24 the environment.
 25 So next slide, Nancy, please.

1 us to pick-pick-pick the things we want you to focus on.
 2 And that's why we also highlight when we give you these
 3 materials and the staff reports and trying to hone in
 4 certain aspects to look in. So Council has had the
 5 proposed order for two years, so I have selected things
 6 that I think are interesting.
 7 However, there's still a lot more in there,
 8 if Council, through your review, has your own specific
 9 questions, please just interrupt, ask them.
 10 Also, if it's something that's appropriate
 11 for me to talk about, I can answer it. If it's kind of
 12 crossing over, you know, Jesse can answer it. Sarah is
 13 here. We can go wherever the Council wants to go and
 14 we're totally prepared to provide you the supporting
 15 documentation, you know, so we are ready.
 16 That said -- and I've already burnt up three
 17 minutes on each -- my portion should be about seven
 18 minutes per standard. So I'm going to really -- I'm
 19 going to try to move along pretty fast.
 20 Some of my standards I'm going to talk
 21 about, kind of, just the rule, the language of the rule
 22 and that maybe is the best way to prepare you for what
 23 you're going to be going over with Jesse. Some of them
 24 are going to be going over the actual details and fine
 25 tune -- (audio disruption) -- under each standard.

1 Okay. I know it is kind of small in here.
 2 It's the actual data on these isn't -- you know, I'm not
 3 really asking Council to zone in and then see exactly
 4 what these are.
 5 These are pages that I've clipped out of
 6 Attachment H-1, Application Exhibit H has information
 7 about structural -- that supports the structural
 8 standard, which includes this very, again, voluminous
 9 preliminary geotechnical evaluation. They looked at
 10 soils, seismic data. Looked at LIDO for landslides and
 11 all of those were evaluated and presented in this map
 12 set and an evaluation done by some geotechnical
 13 engineers.
 14 So seismic is kind of pretty direct. We're
 15 looking at earthquakes. And then the other part of the
 16 Council's structural standard is the non-seismic.
 17 So what is that?
 18 What are we looking at?
 19 So it's soils and issues associated with
 20 soils which also has the kind of overlap with Council's
 21 soil protection standard.
 22 But we also look at erosion, landslides,
 23 groundwater, expansive soils -- these are other types of
 24 examples of non-seismic hazards that are evaluated for
 25 the structural standard.

1 So on this, where the question is -- it's
2 sub (A) and sub (C) of the standard -- has the applicant
3 adequately characterized the site for seismic and
4 non-seismic standards?

5 So I'm going to go back -- I'm not going to
6 do this for every one. For, like, under general
7 standard of review -- the question Council is asking --
8 is the preponderance of evidence, is it more likely than
9 not that they have adequately characterized the site?

10 So that's, like, sub -- that's the first
11 step of this standard.

12 Nancy, will you do the next slide, please?

13 Okay. And then in -- under the structural
14 standard in the proposed order, it's a very -- it's a
15 pretty lengthy condition. Council is used to seeing
16 this condition. And just kind of high-level summary.
17 It's your pre-construction geotechnical evaluation and
18 report that is conducted, that is site-specific, and
19 that it is submitted prior to construction.

20 Now, because this is a very linear facility
21 and -- so, in some regards, because of that, it is going
22 to be crossing a lot of land, a lot of different types
23 of, you know, fault zones; areas that may be more or
24 less impacted by landslides.

25 The -- the Department, in preparation to

1 You don't have to answer. You're not
2 answering that one now.

3 But just as an example of when we're going
4 through of asking -- Council asking itself of what we're
5 tasked with underneath this standard.

6 And let me check my notes here. Too many of
7 them. Okay.

8 And that concludes my portion. So I'm going
9 to pass it off to Jesse now.

10 Actually, no, wait. No, I'm not.

11 Okay. Sorry.

12 Council now gets to -- questions? Any
13 deliberations?

14 Underneath the structural standard that
15 isn't related to a contested case issue -- and I know
16 it's going to be hard for you to navigate what is and
17 isn't.

18 So I feel like if you have questions about
19 any of the materials that I covered, we can talk about
20 it, answer questions, and then if it starts creeping
21 over or there's overlap, then we can just send it over
22 to Jesse and we can end up doing, also, a straw poll at
23 the very end, like, after Jesse's and do the structural
24 standard, including the contested case issue and all
25 that together.

1 understand this and to be able to explain it to Council,
2 we've -- we've requested an investigation plan, which is
3 basically the plan for the geotechnical plan; help us
4 look ahead to plan ahead for how you -- how we're going
5 to evaluate and what type of geotechnical work is going
6 to be provided.

7 And then part of this condition is submit
8 that geotechnical report, which is done based on
9 evaluating, doing bore tests, soil tests by certified
10 engineers of actually going out, doing that geotechnical
11 work, submitting it to the Department.

12 And then the aspect that the facility must
13 be designed -- must then be -- yeah, designed and sited
14 based on the results of that. So the results actually
15 matter. So as to minimize and avoid -- avoid or
16 minimize risk to public health and safety and the
17 environment.

18 So now I'm going to highlight that sub (2)
19 of the standard, or -- I'm sorry, it's (B) and (D).

20 The first one is -- can the applicant
21 that -- the standard -- ask the applicant to design,
22 engineer, and construct the facility to avoid dangers to
23 human safety and the environment presented by seismic
24 hazards affecting the site; and then sub (D) is the
25 non-seismic. So that's the question again.

1 SECRETARY CORNETT: So, Mr. Vice Chair, if I
2 may, just from a procedural standpoint, kind of walk
3 through this is how we're going to -- there is going to
4 be some variation by issue and by standard.

5 But with this one, there is -- you know, for
6 this standard, there's one issue.

7 And so the way the structure is going to
8 work is Kellen has done her presentation. Council
9 certainly can ask questions, you know, we can respond to
10 anything you want.

11 If you have no changes to the proposed
12 order -- not the proposed contested case order, but the
13 proposed order -- you do not need to do a straw poll at
14 this point.

15 But if you believe you have any changes to
16 the proposed order, then that would be discussed and you
17 can get that on the record and we would do a straw poll.

18 But we're going to wait until after the oral
19 testimony on the exceptions and the responses. You will
20 then do a straw poll related to both the standard and
21 the issues.

22 So you would be making a straw poll, say
23 you -- you know, there's a couple of options. Say you
24 agree with everything in the proposed order and
25 everything in the proposed contested case order. The

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1 straw poll would essentially be to evaluate everything
 2 in the proposed order. Everything in the contested case
 3 order related to the standard and that particular issue;
 4 meaning, findings of fact, conclusions of law, and
 5 conditions of approval.
 6 So for the standard, when Kellen's
 7 portion -- only if you have a change proposed to make
 8 would we do a straw poll; otherwise, you would simply
 9 move on. Jesse would do the presentation on the issue
 10 and then we would do, in combination, the proposed order
 11 and the proposed contested case order.
 12 So hopefully that makes sense. And we can
 13 re-visit it, if necessary. I think we'll get into the
 14 swing of things. But it's going, probably, to take a
 15 little bit to really grasp what we're doing here.
 16 So I can go over that again, if you would
 17 like. But just looking for your -- your understanding
 18 or need for more explanation.
 19 VICE CHAIR HOWE: I think we've got a few
 20 questions.
 21 Councillor Jenkins.
 22 COUNCILMEMBER JENKINS: Yeah. Thank you,
 23 Mr. Chair, this is Hanley.
 24 So Kellen's going to present to us what is
 25 in the proposed order.

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1 SECRETARY CORNETT: Correct.
 2 COUNCILMEMBER JENKINS: Okay. And then we
 3 have an opportunity to question anything related to the
 4 proposed order --
 5 SECRETARY CORNETT: Not in the contested
 6 case.
 7 COUNCILMEMBER JENKINS: Right. Then we move
 8 to the contested case.
 9 SECRETARY CORNETT: Correct.
 10 COUNCILMEMBER JENKINS: When we move to the
 11 contested case, we look at the hearing officer's
 12 decision and the exceptions.
 13 SECRETARY CORNETT: Correct.
 14 COUNCILMEMBER JENKINS: Will we take
 15 testimony, then, on the exceptions?
 16 SECRETARY CORNETT: Yes. And so we will
 17 wait until the conclusion of -- any oral testimony on
 18 the exceptions, any oral testimony as responses to the
 19 exceptions. The reason why we wanted to wait as a final
 20 is --
 21 COUNCILMEMBER JENKINS: Right.
 22 SECRETARY CORNETT: -- everything is so
 23 interrelated, you know, we would like to be able to
 24 compartmentalize this out to say, clearly this is only
 25 in the proposed order and clearly this is only in the

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1 proposed contested case order. It's a little bit more
 2 complicated than that.
 3 And so rather than get to a straw poll on
 4 everything in the proposed order, not in the proposed
 5 contested case order, we wanted to give you the benefit
 6 of hearing from Kellen and, again, asking questions, you
 7 know.
 8 And then, again, if you have issues
 9 specifically you want to raise and make changes to the
 10 proposed order, this will be the time to do that for
 11 this standard.
 12 But say you don't; then, again, maybe based
 13 upon the exception, the oral testimony, you know, how
 14 you've reviewed those exceptions, the responses, that
 15 may inform some other thought process where you then
 16 say, oh, well, maybe that wasn't in the contested case,
 17 but now I'm thinking about something in the proposed
 18 order that I would like to change.
 19 So we tried to structure this in a -- it is
 20 complex. I mean, I certainly can't say that it's not
 21 complex. It is. But we're trying to make it as sort of
 22 rational as possible.
 23 COUNCILMEMBER JENKINS: So what you're doing
 24 is you're providing us an opportunity go back to the
 25 proposed order, if need be, as a result of the

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1 exceptions.
 2 SECRETARY CORNETT: Yes, exactly. That's a
 3 better way to state it. Thank you.
 4 COUNCILMEMBER JENKINS: Okay.
 5 VICE CHAIR HOWE: Councillor Beier.
 6 COUNCIL MEMBER BEIER: So we have this
 7 example right now, the Proposed Condition 1 for the
 8 structural standard, and that's what's in the proposed
 9 order. Based on what Hanley said, we'll hear testimony;
 10 we've read the exceptions. We could go back and change
 11 Condition 1 to, perhaps, better address any of those
 12 exceptions if we felt it was necessary.
 13 SECRETARY CORNETT: I mean, yes, but that's
 14 already in the exceptions so --
 15 COUNCIL MEMBER BEIER: Yep.
 16 SECRETARY CORNETT: The evaluation of the
 17 issues in the contested cases and the exceptions that
 18 were filed already should relate to any conditions that
 19 are part of the proposed contested case order.
 20 It's more or less, if by reviewing the
 21 exceptions and that issue in the contested case, does
 22 that inform something that's just in the proposed order
 23 that's not in the contested -- the proposed contested
 24 case order.
 25 So it's more of an indirect connectivity

1 versus a direct connectivity, so it may be that we work
2 through this one. And, again, I think it is going to
3 take one or two to, kind of, get through the swing of
4 it. But we can revisit this, you know, at any time to
5 make sure and go over it again so that you clearly grasp
6 the way that we've structured these straw polls.

7 VICE CHAIR HOWE: This is a time to ask
8 questions of Kellen or comment on things that she said
9 up to this point, but we don't want to do straw polls or
10 anything, we wait first, then go to Mr. Ratcliffe's
11 presentations of the exceptions in case we need to
12 double back to the proposed order before we take --

13 SECRETARY CORNETT: Correct. Unless, for
14 example, you know, this condition, you say -- we think
15 this is only in the proposed order; this is unrelated to
16 the contested case, and you say we think this could be
17 re-written in a certain way.

18 I'm just, again, throwing out an example.
19 That's where you would deliberate and you would make a
20 straw poll on that because it's only related to the
21 proposed order; this is not related to the proposed
22 contested case order.

23 But, again, you get a chance to revisit sort
24 of, theoretically, everything in the structural standard
25 when you do the straw poll vote at the end of the next

1 can find the answer. So I think we can help you
2 navigate that as well.

3 VICE CHAIR HOWE: Okay. At this point,
4 then, are there any questions/comments of Kellen on the
5 structural standard for the proposed order?

6 Councillor Condon.
7 COUNCILMEMBER CONDON: Thank you.
8 Just a question, maybe due to my lack of
9 understanding of the standards -- the standard just in
10 general.

11 So, Kellen, we determined that a site
12 certificate should be granted. We are saying that it
13 has been characterized. The site has been characterized
14 correctly.

15 MS. TARDAEWETHER: Right. It's -- I'd say
16 adequately characterized. Right. So is it adequately
17 characterized and -- where is my book -- can you go back
18 to the language of the standard, please, Nancy?

19 Yeah, I'm just looking at it here.

20 So it's -- through an appropriate
21 site-specific study, has adequately characterized the
22 seismic/non-seismic risks. And then that -- and then
23 the B&D, that they can design, engineer, and construct
24 that facility presumably based on that characterization
25 to avoid hazards to the environment and human health.

1 stage which is Jesse presenting the -- the contested
2 case issue, having oral comment, having oral response,
3 oral comment responses to that. Then you would say, all
4 right, is there anything in there that sort of reached
5 back into the proposed order that I understand better
6 now?

7 VICE CHAIR HOWE: Councillor Jenkins.

8 COUNCILMEMBER JENKINS: Well, I struggled
9 with this process, you know. And I think I understand
10 it now. It is, I think, going to be difficult for us to
11 make the connection between the contested case order and
12 the proposed order. And so we'll have to be careful,
13 you know, that we do that.

14 And it may require separate polls in order
15 to do that. So we'll just have to be as aware as we
16 possibly can.

17 And I think -- like Todd says, I think we
18 just -- we need to -- we'll get in a rhythm.

19 MS. TARDAEWETHER: If I can offer, that's --
20 I feel like in between Jesse and us, like, we are
21 here -- we're kind of compartmentalizing, but I think
22 that if Council, if you have questions, just let -- have
23 the conversation and we can help navigate -- well, we're
24 going to push that over here and answer it over there or
25 maybe it's something that is appropriate for us and we

1 And it's just -- it's very typical that there is this --
2 now, so it's kind of like site-specific study; right?

3 So it's very typical for EFSC energy
4 facilities that you do get this preliminary based on a
5 lot of it is desktop analysis from DOGAMI, from various
6 agencies. However, there is also fieldwork that is
7 done. The LIDO slide information is very site specific.

8 And a lot of it will be the same
9 information. And that information will show up in the
10 final geotech engineering report, but it will also be
11 based on field design, because that's also based on
12 final design. Because we kind of go back to that
13 concept of the site boundary, micrositing corridor and
14 then kind of they're going -- it's going to be trued up
15 based on the final placement of the facility.

16 COUNCILMEMBER CONDON: Thank you.
17 I guess it's that desktop survey part of
18 this that I have some discomfort with.

19 This seems like a second bite at the apple
20 that is certainly more on the ground. I just -- I want
21 to make sure my understanding...

22 MS. ESTERSON: This is Sarah Esterson, for
23 the record.

24 So I also wanted to highlight the Council's
25 information requirements that feed into exhibit -- feed

1 into the structural standard which specifically state
2 that a description and schedule of site-specific
3 geotechnical work that will be performed before
4 construction for inclusion in site certificate as
5 conditions is an information requirement that has to be
6 included in Exhibit H.

7 And that's really where this condition that
8 you see in every site certificate comes from and then in
9 some instances has much more detail given the amount of
10 site-specific geotech work that might be needed.

11 COUNCILMEMBER CONDON: And so just to finish
12 this -- so now there's further work done, which
13 condition one requires. And so when we issue the site
14 certificate, if we decide to issue a site certificate,
15 this suggests to me that if we have -- now a new
16 characterization on the ground site certificate stands
17 and that we have confidence that the facility can be
18 built -- design/construction -- consistent with the
19 standard. It just seems to me two bits -- we issue the
20 site certificate with one set of information and now we
21 have new information that we have to be confident that
22 they can design -- meet the standard.

23 MS. ESTERSON: Yeah. That question applies
24 across standards where there's a large amount of true-up
25 based on actual data. So it is a combination of desktop

1 work with consultants. We can have -- consultants who
2 assist with compliance assist with that who actually
3 have geotechnical engineers.

4 Now, the last part of your question. So the
5 question is if there's actually -- so there's a seismic
6 or non-seismic hazard and then there's a design
7 variation that happens to avoid that hazard. I don't
8 know. How --

9 What is the question?

10 COUNCIL MEMBER BEIER: This is Ann Beier.

11 I'm not quite sure I can follow completely
12 through the process, but it sounds like the applicant
13 would have the option to design around the hazard given
14 the standard that speaks to design and operation, I
15 think.

16 COUNCILMEMBER CONDON: The option or
17 requirement?

18 MS. ESTERSON: So if in the site-specific
19 geotech investigation that happens prior to
20 construction, a landslide hazard, is -- and now we're
21 getting a little close to SF-5, to be honest.

22 But a hazard is identified that avoidance
23 would be the first option and then mitigation through
24 geotech engineering, you know, slope modification,
25 drainage. There's different techniques that they would

1 and some survey combined with what you would get out of
2 the condition. So it's the asking of that second bite.
3 Is that second bite in the condition strong enough to
4 meet the standard?

5 COUNCILMEMBER CONDON: Okay. Thank you.

6 COUNCIL MEMBER BEIER: This is Ann Beier.

7 And just for the record, any of these kind of after
8 Council decisions require the Council to delegate the
9 review to ODOE staff to Department of Energy staff. So
10 the site-specific information on soils or landslide
11 hazard would come back to you and possibly with the
12 assistance of Department of Geology to review to make
13 sure the standard is still met within the approved
14 projects.

15 So I don't know what happens if within the
16 site boundary there is a landslide hazard if there is a
17 design around that would happen as a result to still
18 meet the standard.

19 Is that the process, kind of?

20 MS. TARDAEWETHER: Well, yes. On that --
21 the review is delegated to the Department and that we do
22 engage our reviewing agencies, including DOGAMI. We
23 also -- it would -- this would transition over to. That
24 the siting analysts are involved. Sarah is involved.
25 But it also goes to our compliance program and we also

1 have to look at.

2 And I just wanted to highlight a couple of
3 the changes that we recommended Council include in
4 structural standard condition one as a result of issues
5 raised at the DPO to try and strengthen it a little bit
6 more was a requirement that the investigation plan --
7 this is just the plan. That that be prepared by a
8 professional engineer or geologist licensed in Oregon.

9 We wanted to make sure that they had
10 experience with Oregon-related issues. And then
11 similarly that that report -- that the -- the result of
12 that investigation be prepared by the same professional
13 engineer geologist licensed in Oregon and then we did
14 add I think based on facts that were presented and
15 comments on the record of the DPO additional specifics
16 that had to be evaluated, different methodologies that
17 had to be used to evaluate risks.

18 MS. TARDAEWETHER: And Councilmember Beier,
19 I think my numbering -- no. It is ten.

20 So in the condition sub (10), it's do the
21 evaluation and then, you know, additional information.
22 It is one of the really lengthy conditions. But it
23 says, "Define and delineate geological and geotechnical
24 hazards to the facility and identify means to mitigate
25 the identified hazards."

1 So there is an air -- a requirement that
2 says, you know, tell us if what you're seeing and then
3 how are you going to minimize or avoid them.

4 Thank you for the questions.

5 VICE CHAIR HOWE: Any other comments or
6 questions from the Council on the proposed order
7 structural standard?

8 I think we're ready, then, Mr. Ratcliffe, to
9 move on to the exceptions on the structural standard.

10 MR. RATCLIFFE: All right. Thank you,
11 Mr. Vice Chair and members of the Council.

12 And so the issues -- the contested case
13 issue we're going to be going to is issue SS-5. The
14 limited party is John White. The issue -- and do we
15 have a slide for the issue itself? I think we need to
16 bring that up.

17 MS. TARDAEWETHER: Yes. Keep going. It
18 should be one more. The straw poll and the next one,
19 Nancy. There you go.

20 MR. RATCLIFFE: Okay. So we have the issue
21 up on the screen that was raised by Mr. White, whether
22 the applicant has adequately evaluated construction-
23 related blasting in Union County, the City of La Grande,
24 under the structural standard. Specifically whether the
25 applicant should be required to conduct site-specific

1 sets out the scope of the issues that will need to be
2 covered in the application. That project order
3 established that -- what's referred to as
4 "reconnaissance level," which involves some field level
5 evaluation and "desktop" which is basically a review of
6 existing literature pertaining to a subject matter.
7 That this level of evaluation to provide a preliminary
8 seismic and non-seismic risk identification at the site;
9 that this kind of scope that the project order
10 established for required investigations was adequate to
11 evaluate compliance under the structural standard.

12 The project also established that a detailed
13 site-specific geotech investigation for the entirety of
14 the 300 mile site boundary was not required for the
15 application due to limitations and practicality, given
16 to -- resulting from potential route and final design
17 changes and limitations on site access.

18 So that was one piece of the opinion is that
19 basically the -- the level of information that the
20 Department was requiring that the applicant provide that
21 that level of information was adequate to evaluate
22 compliance under the standard.

23 And so based on that project order then the
24 applicant has performed a significant amount of work to
25 characterize the potential geological and soil hazards

1 geotech surveys to characterize risks from slope
2 instability and radon emissions. And then on each one of
3 these slides, since this is our first issue, we're going
4 to be doing this -- we are going to have the issue up on
5 the screen. And we're going to have the references from
6 the proposed contested case order where the hearing
7 officer made findings of fact on the issue, reached
8 conclusions of law, and then wrote her opinion.

9 And again, because of the complexity of this
10 case, the number of issues, those are scattered
11 throughout, and so, you know, it sometimes will
12 necessitate some page flipping to tie things together if
13 we need to go to the proposed contested case order. But
14 we wanted to get those references up on the screen.

15 So -- but what I'm going to do now, before
16 we call Mr. White up here to provide his argument, is to
17 go over the hearing officer's opinion briefly.

18 And so what the hearing officer ruled on
19 this particular issue is that the Council's rules allow
20 the Department -- authorize the Department to establish
21 the level of analysis that must be included in an
22 application and allow consideration of the size and type
23 of a proposed facility.

24 So then the Department's second amended
25 project order -- and the project order, again, kind of

1 within the site boundary. And then the pre-construction
2 condition, SS-1, structural standard condition 1, would
3 evaluate and mitigate slope instability issues.

4 The hearing officer's other conclusions were
5 that Mr. White did not present facts or evidence to
6 support his concerns that blasting would likely be
7 needed during tower construction near his home. This is
8 in La Grande at towers -- tower numbers 108/3 to 109/2.

9 And because site specific studies have not
10 been done, the standard had not been met. So that was,
11 you know, her looking at Mr. White's issue and
12 concluding there weren't facts or evidence to support
13 that.

14 And, therefore, the hearing officer ruled
15 that the Council could find based on compliance with the
16 Department's recommended structural standard conditions
17 and soil protection condition four, which includes a
18 blasting plan, that the structural standard had been met
19 with respect to that issue.

20 So I'm going to stop for a second and, you
21 know, that I -- Council is familiar with these
22 materials. You've heard the exceptions. Nonetheless,
23 what I just said was a mouthful and gets into some
24 technical areas.

25 I don't, you know -- I think the goal here

1 is at this point to turn things over to Mr. White to
 2 provide his additional argument.
 3 But if there's just plain and simple
 4 confusion over anything that I just said with respect to
 5 the hearing officer's order, you can go ahead and ask
 6 questions related to that. And if -- if there aren't
 7 any at this point, then I'm just going to provide a
 8 couple of guidelines for what the -- the oral testimony
 9 needs to look like here.
 10 VICE CHAIR HOWE: Questions at this point?
 11 Doesn't look like it.
 12 MR. RATCLIFFE: All right. So we're going
 13 to call Mr. White up here in a moment.
 14 And I just want to go over a couple of
 15 things about what the -- the oral argument looks like
 16 here. And the main point I want to make is that the
 17 evidentiary record in this process is closed.
 18 And what that means is that if you have new
 19 documents, new information that you've learned that has
 20 not already been submitted into the record as part of
 21 the contested case process or as part of your DPO
 22 comments or however it came to be in the record, this is
 23 not the time to add new information. New factual
 24 information. And by and large, the point of the
 25 contested case process is to make sure that there's

1 about whether the applicant, Idaho Power, has adequately
 2 evaluated construction-related blasting near a populated
 3 area of La Grande. I've been a homeowner in
 4 Southeastern La Grande for 12 years and my home is
 5 located about 500 feet from the B2H site boundary at
 6 Hawthorne Street.
 7 My concerns have to do with damage to homes
 8 and local streets during construction. I'm asking that
 9 you reverse the ALJ's decision on Issue SS-5. The issue
 10 is about whether Idaho Power has complied with the
 11 relevant structural standard, which states that, quote,
 12 "The applicant through appropriate site-specific study
 13 has adequately characterized the seismic hazard risk of
 14 the site."
 15 In other words, to obtain the Council's
 16 approval for site certificate, Idaho Power must
 17 demonstrate that they have conducted site-specific
 18 geotechnical surveys to characterize risk from slope
 19 instability.
 20 And their response to my exception, Idaho
 21 Power acknowledges the wording of the relevant standard
 22 but continues to claim that is simply not practical to
 23 conduct, quote, "a detailed site specific geotechnical
 24 investigation for the entire site boundary in advance of
 25 obtaining full site access."

1 ample opportunity to get that factual evidence into the
 2 record.
 3 What this is intended to do is to be an
 4 opportunity to address the councilmembers through oral
 5 argument to talk about pieces of the exceptions that
 6 have been filed that address your issue and to, you
 7 know, share those items with the Council that you have
 8 particular concern about or want to highlight.
 9 So with that in mind, again, we're going to
 10 stay within the scope of the issue that you've been
 11 granted limited-party status for and if there's
 12 references to factual evidence that is to evidence that
 13 is already in the record of the contested case or the
 14 proposed order.
 15 So those are all the preliminaries I have.
 16 And so, Mr. White, whenever you're ready,
 17 you can come on up. Or do we have recorded -- I guess
 18 that's the other thing I should say is we have recorded
 19 testimony from some folks who weren't able to make it
 20 here in person today. So in some instances, we will be
 21 listening to a recording and seeing whether or not the
 22 applicant or the Department have anything else to
 23 respond with.
 24 MR. WHITE: Hello, councilmembers. I'm
 25 Petitioner Jonathan White presenting issue SS-5 which is

1 My response to their response is: One, no
 2 one is requesting that Idaho Power investigate the
 3 entire site boundary. SS-5 requests only that they
 4 investigate the stability of the slope above
 5 Southeastern La Grande, an area identified as
 6 unconsolidated landslide debris in Idaho Power's
 7 application; two, if Idaho Power has been able to comply
 8 because they haven't obtained full site access, that's
 9 their problem and not mine.
 10 Idaho Power's response is filled with lots
 11 of good intentions and excuses, but there's very little
 12 that shows actual compliance with the relevant standard,
 13 though the repeated use of the future tense in the
 14 following quotations, "Idaho Power will either avoid
 15 construction in areas of instability or will take
 16 robust measures to mitigate any impact. Idaho Power
 17 will conduct site specific geologic and geotechnical
 18 investigations. Such investigations will be performed
 19 by a professional engineer geologist. Where structures
 20 cannot be removed or realigned, Idaho Power will employ
 21 mitigation techniques." End of quotes.
 22 My reading of the structural standard is
 23 clear. Before the Council can approve a site
 24 certificate to begin construction of the B2H, Idaho
 25 Power must comply with the Oregon Administrative Rules

1 which are designed to protect Oregonians from ill-
2 considered projects such as this.

3 And, in addition, I just wanted to ask the
4 Council not to delegate part 2 of the review. Make
5 Idaho Power come back to EFSC to prove they can meet the
6 build part of the standard.

7 VICE CHAIR HOWE: Thank you, Mr. White.

8 MR. RATCLIFFE: Okay. The next part of the
9 process is to see whether or not the applicant has a
10 response and followed by the Department. And again,
11 three-minute time limit.

12 MS. RACKNER: Good evening, councilmembers.
13 I'm Lisa Rackner and I'm representing Idaho Power in
14 this case.

15 The core of Mr. White's exception is really
16 the same subject matter that we've been grappling with
17 already tonight, which is the phased study process which
18 allows the company to provide a desktop -- primarily
19 data but -- primarily desktop but not completely desktop
20 analysis in its application in recognition of the fact
21 that it's simply impractical for the company to do a
22 detailed site-specific geotechnical analysis of the
23 entire route before it has a site certificate before it
24 knows where the route is actually going to be and based
25 on the conditions in the site certificate can do all of

1 So there will be robust geotechnical
2 analysis. All of that analysis in working with ODOE,
3 any changes that need to be made, will protect the
4 public and the condition has been satisfied.

5 Thank you.

6 VICE CHAIR HOWE: Do we have any response
7 from Department staff?

8 MR. ROWE: Just briefly. Patrick Rowe, from
9 the Department of Justice. I think this really comes
10 down to Council's level of comfort with the structural
11 standard conditions. So I'd recommend that to the
12 extent that you haven't already take a hard look at them
13 and make sure that you are comfortable with them.

14 As the ALJ has noted, as has been noted in
15 the briefs on this, this type of format, phased -- doing
16 studies after the site certificate is issued is common.
17 It's common practice for Council to approve site
18 certificates with those types of conditions.

19 So in this instance, you just need to look
20 at the structural standard conditions one and two. Make
21 sure you are comfortable with them. If there's anything
22 that you think needs to be supplemented, then please let
23 the Department know and the Department -- you would
24 obviously need to let us know during the course of this
25 hearing and the Department could make those changes in

1 the final -- the final siting and micrositing. It's at
2 that point that it makes sense for the company to do
3 this detailed geotechnical analysis and the conditions
4 that you've heard about are quite robust in terms of
5 what will be required of the company.

6 I hear Mr. White is concerned because a lot
7 of these are commitments that are going to happen in the
8 future. But they are commitments and they will be
9 enforced by the Council and they will be enforced by
10 ODOE.

11 So once those geotechnical studies have been
12 done -- the studies will be done, first of all, in
13 consultation with DOGAMI and with ODOE staff and all
14 necessary mitigation micrositing changes will be done to
15 ensure that the transmission line is safely sited and
16 will not present seismic risks.

17 The other thing I wanted to point out is
18 that this phase study process is consistent with the
19 second amended project order which asks the company to
20 work with DOGAMI to put together an analysis that showed
21 what we -- what we can do now. What needs to be done in
22 the future. It's also consistent with your statutes
23 which allows you to issue a site certificate with
24 conditions that then allow ODOE to review the rest of
25 the data as it comes in.

1 your final order.

2 There is one note. It didn't come up in
3 oral testimony but it was in Mr. White's written brief
4 on this exception where he took issue with the proposed
5 contested case order statement that there was,
6 quote, "significant work that has been done."

7 And he took issue with the fact that there
8 hasn't actually been significant fieldwork that was
9 done, but it was just desktop study that has been done.

10 The Department would recommend that that
11 statement in the proposed contested case order be
12 modified to clarify that the work that has been done to
13 date has been reconnaissance-level literature review and
14 evaluation. Excuse me -- and evaluation.

15 Just to remove any implication or suggestion
16 that the work that Idaho Power has done to date has been
17 significant fieldwork. It's been significant literature
18 review and evaluation. So you could clean that up in
19 the proposed -- you can modify that portion of the
20 proposed contested case order.

21 MR. RATCLIFFE: So we have reached the stage
22 now on this contested case issue where we're open for
23 discussion among our councilmembers. I'm here to act as
24 a resource to answer any questions that I can about
25 legal issues.

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1 Ms. Tardaewether and Ms. Esterson are
 2 available to be asked questions about locating
 3 information, which they are going to have a better
 4 ability to do than I will.
 5 You know, if you want to see a -- a page
 6 number of something, a piece of the proposed contested
 7 case order of an exception, you know, whatever that
 8 might be, they can assist with that.
 9 But the goal from here is to, you know, take
 10 a look at this particular issue that's been raised, see
 11 if there's a feeling that anything needs to be changed
 12 from the proposed contested case order, and then you're
 13 going to be circling back to the -- the kind of the
 14 broader issue, you know, with the goal of leaving the
 15 structural standard because we just have the one
 16 exception filed on one structural standard issue. That
 17 we leave the structural standard with a good sense of
 18 where the Council is at overall, not just the contested
 19 case issue but the -- the standard as a whole.
 20 So with that, I'll turn it over and I'm
 21 available to answer questions.
 22 VICE CHAIR HOWE: Councillors, are there any
 23 comments or changes recommended for the proposed
 24 contested case order?
 25 COUNCILMEMBER HANLEY: So do we have the

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1 page number for those conditions? Does somebody have
 2 them? I don't want to start thumbing around through
 3 here.
 4 COUNCIL MEMBER BEIER: In terms of the
 5 contested case, I would accept the recommendation of
 6 counsel for Department of Energy to clarify that it was
 7 just significant desktop analysis. So that would be the
 8 only recommendation in the contested case.
 9 But I, too, would like to see the conditions
 10 so that we can ensure that those are responsive to the
 11 exception and to any other concerns.
 12 VICE CHAIR HOWE: I agree and I think -- do
 13 any of the Council disagree with that? Making sure
 14 that's included to clarify in the contested case order.
 15 COUNCILMEMBER JENKINS: This is Hanley. I
 16 agree with Ann, but I would like to see the conditions.
 17 VICE CHAIR HOWE: You want to see that.
 18 Yeah.
 19 MR. RATCLIFFE: Just asked Wally to download
 20 the proposed order. So we should, at some point soon,
 21 be able to project on the screen the proposed
 22 conditions.
 23 MS. TARDAEWETHER: I've also put -- oh,
 24 wait.
 25 MS. ESTERSON: So the page number of the

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1 proposed order is page 81 and 82; that has the language
 2 of structural standard condition one.
 3 And structural standard condition one also
 4 references soil protection condition four, which
 5 establishes a process where we have to get additional
 6 information prior to construction on any locations where
 7 blasting is identified as being necessary.
 8 And then if that's the case, it routes you
 9 over to a blasting plan that's in soil protection
 10 condition four. That condition has a formal state,
 11 local, and federal reviewing agency process prior to
 12 construction to ensure that the blasting plan is
 13 adequate.
 14 VICE CHAIR HOWE: Ms. Esterson, the standard
 15 was on page 81. The conditions was on what page?
 16 MS. ESTERSON: The condition is on pages 82
 17 and 83. That's the first condition.
 18 COUNCILMEMBER JENKINS: Thank you.
 19 So, Mr. Chair, this is a question for Jesse.
 20 Do we -- at what point do we allow, then,
 21 rebuttal, I guess it's rebuttal testimony. I mean, are
 22 we done with the testimony and now are deliberating,
 23 or --
 24 MR. RATCLIFFE: Yes. You heard from
 25 Mr. White and from Idaho Power and the Department on

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1 this, and that's it, and so we're in deliberation.
 2 MS. TARDAEWETHER: Okay. So up on the
 3 screen here, which is projected on through the webinar,
 4 is the proposed order in a PDF, so I can't go in and
 5 edit this. But this is -- and so this is on -- this
 6 condition starts on page 81 of the proposed order.
 7 It's kind of hard to -- to see. But for
 8 Council, if they had their computer, now, on your bottom
 9 left-hand screen -- this is just one of those tips and
 10 tricks -- there is this numbers thing. I'm circling my
 11 hand around it.
 12 So even though in the document it's page 81,
 13 if you type in "88" right there, it will take you right
 14 to the page. This is the -- it's like the PDF page
 15 number.
 16 But if we do any modifications, we will use
 17 the actual page number in the document. But this is
 18 just helping jumping around because this -- we're in the
 19 big document with all the attachments.
 20 So I'm just going to slowly scroll down
 21 here. I know for folks in the back of the room it's
 22 hard to see this, but.
 23 COUNCILMEMBER JENKINS: Thank you,
 24 Mr. Chair.
 25 So, Patrick, your recommendation doesn't go

1 here. Your recommendation goes in the contested case
2 order to be more clear about the information that's been
3 provided to date.

4 MR. ROWE: I had made one recommendation
5 with regard to just the cleanup of the proposed
6 contested case order, and that related to Mr. White's
7 written testimony where he took issue with the hearing
8 officer stating that significant work had been done.

9 And that's a simple cleanup where Council
10 could clarify that significant reconnaissance desktop
11 study work has been done, not significant fieldwork.

12 I also pointed out, though, that for the
13 larger compliance with the structural standard, Council
14 should go through the exercise which it's going through
15 right now which is reviewing the conditions the
16 Department has recommended and let the Department know
17 if there is any additions or revisions to those
18 conditions Council would want made in order to find
19 compliance with this standard.

20 VICE CHAIR HOWE: Councillor Beier, you
21 brought up the issue of the significant work being
22 cleared that it was reconnaissance not field. And we
23 kind of dealt with that right when handling -- or
24 Councillor Jenkins was asking Ms. Tardaewether on where
25 we find the condition in the document.

1 make as good of a record as she can.

2 SECRETARY CORNETT: Mr. Vice Chair, for the
3 record, Todd Cornett. Just procedural element. So I do
4 have language. Basically, I have potential language for
5 all of these straw poll votes.

6 So I've already reflected this. So even
7 though you're kind of going through and saying, you
8 know, does everybody agree, does everybody agree, which
9 is great, I think for the record, for the formal record,
10 it would be good to get the voice vote and for me to
11 read what I think it is that the Council is interested
12 in or both the standard and the issue.

13 So I just want to put that in there before
14 you get kind of too far and then we move to the next
15 one. I think that would be good to have on the record
16 because there will be consistency and clarity between
17 each of the standards and each of the issues if we do it
18 that way.

19 But that is just my recommendation. You are
20 certainly --

21 COUNCILMEMBER JENKINS: This is Hanley. I
22 think that is a good idea. That is probably going
23 beyond a straw poll. I think it is good because then we
24 have an understanding of what it is that we're
25 recommending. And it's in writing.

1 So let's circle back real quick, and does
2 the Council agree with Councillor Beier's statement
3 about clearing up the proposed order language -- no.
4 That was in the contested case language for the
5 reconnaissance issue. Everybody in agreement with that.

6 COUNCILMEMBER JENKINS: Yeah. This is
7 Hanley. I agree.

8 COUNCILMEMBER CONDON: Cindy Condon. I
9 agree.

10 COUNCILMEMBER CHOCKTOOT: This is Perry
11 Chocktoot. I agree.

12 MR. RATCLIFFE: Okay. We've got that taken
13 care of. Now we can circle back.

14 VICE CHAIR HOWE: Now we go back to the
15 proposed order --

16 MR. RATCLIFFE: Correct.

17 VICE CHAIR HOWE: -- and the conditions
18 within the proposed order.

19 COUNCILMEMBER JENKINS: Yeah. See, this is
20 going to be a little while. We have to keep track of
21 where we're at.

22 MR. RATCLIFFE: And, Mr. Vice Chair, I just
23 want to jump in for a second here because we had a
24 request from the court reporter to just remind everyone
25 to speak up and to not speak too quickly so that she can

1 VICE CHAIR HOWE: Okay. Let's have
2 everybody verbally just walk through that.

3 MR. RATCLIFFE: Yeah, let's hear what Todd
4 has.

5 SECRETARY CORNETT: I would say, though,
6 you're still in that sort of discussion about the
7 conditions related to the standard. If you want -- if
8 you're ready to have a straw poll heard -- (audio
9 disruption) -- and the contested case issue, certainly
10 read that. Or -- being or thinking about -- all
11 conditions of -- findings of fact, conclusions of law,
12 conditions of -- (audio disruption) order as the having
13 the discussion before I get to that point of reading
14 what I think where -- where you're going.

15 COUNCILMEMBER JENKINS: Except I'm going to
16 get confused.

17 VICE CHAIR HOWE: Excuse me.

18 Secretary Cornett, you're not speaking to
19 the action -- or not action, but the position we just
20 took on the proposed contested case order clarifying the
21 language on the reconnaissance work.

22 SECRETARY CORNETT: So the way we've
23 structured it -- and we can do that singly by itself if
24 you want to. We currently have it structured as a
25 combined standard and issue. I can separate that if you

1 want.
2 COUNCILMEMBER JENKINS: Yeah. I would like
3 to separated. This is Hanley.
4 VICE CHAIR HOWE: I think we have a straw
5 poll on that one, unless the language doesn't get us
6 there.
7 SECRETARY CORNETT: I think from -- yeah, so
8 I can separate that out, but I think we still -- we
9 didn't get a sort of verbal -- we -- we, the Council,
10 agree with the proposed order for the structural
11 standard. We still need to get there.
12 COUNCILMEMBER JENKINS: I think we'll go
13 back to that.
14 SECRETARY CORNETT: So if you want, I can
15 read, again, what -- where I think you're going just
16 with the issue.
17 COUNCILMEMBER JENKINS: Yes.
18 SECRETARY CORNETT: Okay. And, again, this
19 is not like in the form of a more formal motion, this is
20 just to clarify my understanding.
21 So, Council, you agree with the findings of
22 fact, conclusions of law, and conditions of approval --
23 in this case the findings of fact, conclusions of law,
24 in the proposed contested case order pertaining to issue
25 S-5 with the following modification.

1 yet.
2 SECRETARY CORNETT: So that's where I think,
3 again, this vote -- this should be -- I mean, we can
4 split these out but it gets much more complicated.
5 So it would be better if you are
6 deliberating and there are multiple things that you get
7 to that conclusion of this is what we think and you do
8 it in one straw poll. And if there are multiple
9 modifications, those can be reflected in that one straw
10 poll but not do -- there's already going to be about 70
11 of these things.
12 And so, you know, if we split them out,
13 we're doubling those. So it's -- it would be easier if
14 when you're ready, you know, even if you want to split
15 out the proposed order versus the proposed contested
16 case order, but you do it one time. In this case, you
17 have one change. I think that's reflected.
18 If you have other thoughts or ideas, you
19 should have that conversation and deliberation first.
20 Then we get to the straw poll on that inclusive of, you
21 know, any of the changes that you want made.
22 COUNCILMEMBER CONDON: Councilmember Condon
23 again.
24 I would like to wait. I do have some other
25 questions on the contested case. And I'm wondering if

1 To change the language to reflect in -- that
2 the significant reconnaissance -- that significant
3 reconnaissance desktop work has been done.
4 And, essentially, what this does is it gets
5 us on the record so we can go back and make a change in
6 the draft final order to reflect all of these changes.
7 So it doesn't have to be perfect language.
8 It just has to be enough to give us that understanding
9 of where you are going tonight so we can reflect that in
10 the draft of the final order.
11 VICE CHAIR HOWE: Okay. Let's each
12 councilmember go through and --
13 SECRETARY CORNETT: I can roll call if you
14 want.
15 VICE CHAIR HOWE: You can do a roll call.
16 COUNCIL MEMBER CONDON: Cindy Condon here.
17 I'm not sure I agree with -- I agree that
18 I -- I want to clarify the language from significant.
19 I'm not sure I'm ready to accept the
20 contested case, which I think I heard in -- that we were
21 accepting the findings of fact and the conclusions of
22 law.
23 COUNCILMEMBER JENKINS: Oh, I see what
24 you're saying.
25 COUNCILMEMBER CONDON: I'm not quite there

1 we have the opportunity to ask the -- Mr. White and
2 Idaho Power questions on their testimony.
3 I thought we were going to have that.
4 MR. RATCLIFFE: Vice Chair Howe,
5 Councilmember Condon, that is at the Council's
6 discretion.
7 You know, I think the -- the idea with the
8 oral argument is to provide everyone an opportunity to,
9 you know -- to list the important issues and then
10 provide responses.
11 But if there are specific questions, that is
12 okay if that's what you want to do.
13 The one place that I will try to kind of
14 keep things consistent is to make sure that we're not
15 veering into something that is not already included in
16 the evidentiary record. Because that is important that
17 we, you know, acknowledge that that's been closed and --
18 and that we need to stick to that.
19 VICE CHAIR HOWE: Councillor Condon.
20 COUNCILMEMBER CONDON: Councilmember Condon
21 here.
22 I am just a bit confused by the contested
23 case on page 268. And this is the first time I've read
24 through a contested case.
25 So in Mr. White's testimony, he's concerned

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1 about the stability on the hill. And I heard no mention
 2 of water on page 268 discussing structural Standard 5.
 3 There's a condition, I think, on B -- I don't know if we
 4 want to call it up -- prior to construction, the
 5 certificate holder will consult with landowners
 6 regarding right-of-way acquisition.
 7 It's rather long but it speaks to water.
 8 And I'm just questioning is this a water -- is Mr. White
 9 concerned about water or stability of the hill?
 10 And secondly, for Idaho Power, Mr. White
 11 said pretty clearly -- and I don't see it anywhere that
 12 anybody is asking for a full structural stability study
 13 on the ground for the whole project but just this one
 14 piece. This -- the hills over La Grande.
 15 And I would just like you to clarify for
 16 me -- talked about the whole project versus this piece
 17 of it to satisfy maybe some of the concerns prior to
 18 site certificate being issued.
 19 So I don't know what order that -- or how we
 20 want to do this.
 21 SECRETARY CORNETT: Can you give some
 22 clarification, Jesse, on how to proceed.
 23 MR. RATCLIFFE: Yeah. And again, this is
 24 going to be at the Council's discretion how you want to
 25 handle this.

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1 I think that, you know, they -- to keep
 2 things as fair and as clear as possible, you know, if --
 3 if a councilmember has a question, we should -- you
 4 know, you should direct that to whoever it is that you
 5 want to hear from, provide the other party an
 6 opportunity to say something about it as well.
 7 And, you know, in this particular instance,
 8 I heard you ask a question that sounded like it was
 9 directed to Mr. White. And -- and so, you know, I
 10 think, again, to be fair, it would make sense to have
 11 him answer that and then to see if Idaho Power has
 12 anything else that they want to say about that.
 13 And, again, I don't want to sound like a
 14 broken record on this. But we really, really need to
 15 keep things confined to what is on the record. I don't
 16 think we've strayed from that at all. But it is just
 17 something I want everybody to keep in mind.
 18 VICE CHAIR HOWE: Okay. It sounds then like
 19 we're giving the opportunity to Mr. White to come up and
 20 answer the question that Councilor Condon has asked
 21 with no new information being presented.
 22 MR. WHITE: Okay. The question I think I
 23 heard was -- was this about water on the slope.
 24 And it's really about -- in the application,
 25 there are maps and descriptions of the area around

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1 La Grande. And the area is described as "unstable" in
 2 the form of unconsolidated landslide debris. And
 3 everyone who lives in the area knows what that's about.
 4 You know, the driveways are cracking and, basically,
 5 pulling apart. It's a very unstable area. So people
 6 are concerned about that.
 7 And also the -- the blasting plan mentioned
 8 earlier never specifies where blasting is going to
 9 occur. So we just don't know. They might decide to
 10 blast; they might not.
 11 Was there anything else?
 12 COUNCILMEMBER CONDON: Thank you.
 13 Just to confirm. It was not specific to
 14 water? It's stability for the hill.
 15 MR. WHITE: Correct.
 16 COUNCILMEMBER CONDON: And there's no
 17 request that I've heard or read about of you or anyone
 18 else saying there needs to be an analysis of the
 19 whole --
 20 MR. WHITE: Correct. Yeah. No one that
 21 I've heard has been saying that. Right.
 22 COUNCILMEMBER CONDON: Thank you.
 23 VICE CHAIR HOWE: Okay. Does Idaho Power
 24 wish to --
 25 MS. RACKNER: Just very briefly.

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1 I've been able to confirm -- and this is in
 2 the record -- that the geotech plan does -- there is a
 3 plan to specifically address and do detailed
 4 geotechnical studies of the area that Mr. White is
 5 concerned about. That is something that will be done
 6 once we know where the route is going to do. Those
 7 types of studies are not particularly effective until
 8 you know that you have the final design and routing.
 9 And one other point I would ask the Council
 10 to consider is that it certainly isn't in Idaho Power's
 11 interest to place a tower in an unstable area. Not only
 12 are we -- you know, are we required by law to avoid
 13 those types of risks, but it would be -- you know, it
 14 would be something that -- that Idaho Power, regardless
 15 of the law, would avoid.
 16 And we hope that that gives the Council some
 17 comfort about our intentions of doing very serious
 18 geotechnical work, particularly in areas of concern
 19 prior to any construction.
 20 VICE CHAIR HOWE: Thank you.
 21 Okay. So, Council, are there any
 22 suggestions or recommended changes to the conditions
 23 under this structural standard No. 5 in the proposed
 24 order?
 25 No. Is this in the --

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1 SECRETARY CORNETT: Contested case order.
2 VICE CHAIR HOWE: This is in the contested
3 case order. Sorry.
4 That's right.
5 COUNCILMEMBER CONDON: Councilmember Condon
6 again.
7 Mr. Ratcliffe, on page 268, the bolded
8 paragraph, is that a condition -- a required condition
9 in the contested case order?
10 MS. ESTERSON: On page 268 is contested case
11 issue SS-3 for which there were no exceptions filed,
12 which was more specific to blasting and potential
13 impacts to water quality. Now we're talking about SS-5.
14 COUNCILMEMBER CONDON: Thank you.
15 I thought it was related to Mr. White's.
16 MS. ESTERSON: Different party.
17 MR. RATCLIFFE: So we have an amended
18 recommended soil condition number four and that includes
19 the highlighted information that you're pointing to.
20 And so that is an -- a recommendation from
21 hearing officer to include that language.
22 So as the proposed contested case order is
23 written, if adopted, that would include this bolded
24 language.
25 COUNCILMEMBER CONDON: But not related to

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1 structural standard 5. I misread that then.
2 MR. RATCLIFFE: Yeah. It's not -- it
3 wasn't -- this language didn't arise from structural
4 standard issue 5, but it is a piece of the proposed
5 contested case order.
6 And so should you adopt the proposed
7 contested case order without modifying these, then that
8 bolded language will go in. So since we're in this kind
9 of narrowing down of issues, we have a number of issues
10 under which no exceptions were filed where the hearing
11 officer may have made changes from the Agency's proposed
12 order to address some of the concerns that were raised
13 by the person who -- who requested that contested case
14 issue.
15 And, you know, I -- I don't have the
16 specifics of this, you know, or know the reason why this
17 person didn't file an exception. But it's entirely
18 possible that, you know, that that revision met the --
19 the concerns of the person involved.
20 COUNCILMEMBER CONDON: So my error, I think.
21 VICE CHAIR HOWE: Okay. Then back to
22 structural standard 5. There's a lot of interweaving
23 going on here between different structural standards,
24 but sounds like that one was taken care of and under
25 structural standard 3.

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1 Let's go back to structural standard 5.
2 Are there any further comments or
3 recommendations for changes to conditions under the
4 proposed contested case order? Related to structural
5 standard 5.
6 Since hearing none, maybe we got through
7 that one. And now we need to go back to the proposed
8 order.
9 SECRETARY CORNETT: No, we did not. There
10 was no straw poll. So we stopped the straw poll and
11 then you went into deliberations. So we need to go back
12 to the straw poll on the proposed contested case order
13 before we go back to the proposed order.
14 VICE CHAIR HOWE: So in doing the straw
15 poll, do we want you to poll us?
16 SECRETARY CORNETT: Yes. So unless there's
17 any other changes, I can read that one.
18 VICE CHAIR HOWE: We'll include the language
19 that yes, that Patrick suggested. Okay.
20 SECRETARY CORNETT: Okay. So as I have it
21 articulated, Council will agree with the findings of
22 fact, conclusions of law, and conditions of approval in
23 the proposed contested case order pertaining to issue
24 S-5 with the following modifications. To make the
25 changes to reflect that the proposed contested case

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1 order -- sorry -- that's duplication. That significant
2 reconnaissance desk survey was conducted.
3 Okay. So Henley Jenkins.
4 COUNCILMEMBER JENKINS: (No audible
5 response.)
6 SECRETARY CORNETT: Perry Chocktoot.
7 COUNCILMEMBER CHOCKTOOT: Yes.
8 SECRETARY CORNETT: Kent Howe.
9 VICE CHAIR HOWE: Yes.
10 SECRETARY CORNETT: Ann Beier.
11 COUNCILMEMBER BEIER: (No audible response.)
12 SECRETARY CORNETT: Jordan Truitt.
13 COUNCILMEMBER TRUITT: Yes.
14 SECRETARY CORNETT: Cindy Condon.
15 COUNCILMEMBER CONDON: Yes.
16 SECRETARY CORNETT: Thank you.
17 And now back to the proposed order.
18 Correct.
19 VICE CHAIR HOWE: Yes, Councillor Beier.
20 COUNCILMEMBER BEIER: Just conferred with
21 our counsel.
22 I just had a question on the blasting
23 component of this condition, which requires notice but
24 notice through a newspaper. And newspapers aren't
25 always the best source of information these days.

1 And I'm wondering if it is impractical to
2 ask that the applicant notify property owners within
3 given distance of a blasting activity. I know that's
4 something we regularly did at the local level just to
5 make sure that property owners were aware that something
6 was going to happen.

7 I think the other conditions are appropriate
8 in terms of -- of notice. But -- but I think the
9 newspaper notice alone is -- is probably not the best
10 vehicle. So thank you.

11 COUNCILMEMBER JENKINS: How does Council
12 feel about that suggestion on notice?

13 COUNCILMEMBER BEIER: So thank you for the
14 question, Councilmember Jenkins. I'm trying to remember
15 what we did at the local level. And I don't know if
16 it's 500 feet from the impact area or a half mile. I --
17 I am the wrong person to ask about distance.

18 But thinking about the impact of blasting
19 and just letting people know that it's going to happen,
20 I -- I just can't remember from our local code what
21 we required. But somebody with practical experience
22 could help inform us. Thank you.

23 MR. ROWE: This is Patrick Rowe with the
24 Department of Justice.

25 Can I just seek clarification? Are you

1 who are affected.

2 VICE CHAIR HOWE: So, first of all, I think
3 we need to find out where is the Council on this?

4 COUNCILMEMBER JENKINS: Let me ask Ann.
5 This is Hanley. So this would be in addition to the
6 one-week notice in the newspaper or in replacement of?

7 COUNCILMEMBER BEIER: I don't feel strongly
8 either way, but -- but I think it's critical to target
9 the notice. Not -- I hate to say this in public, but
10 not many people read public notices in newspapers.

11 MS. TARDAEWETHER: I am just going to
12 offer -- because this would be the applicant or its
13 construction contractor. And I guess -- and we're just
14 so programmed that when you say "notice," I get a
15 procedural trigger in my head and it means a certain
16 thing.

17 So -- maybe Jesse -- Jesse could offer you,
18 if we end up going down that route we call it an
19 information update, you know. I just don't know --
20 people -- some people are used to having a notice be
21 a -- anyhow. So just mindful of the language so we
22 don't venture into creating a process step that --

23 COUNCILMEMBER BEIER: Thank you. That's a
24 good clarification.

25 COUNCILMEMBER JENKINS: So this is Hanley.

1 referencing, Councilor Beier, to the amended
2 recommended soil protection condition four in the
3 proposed contested case order.

4 COUNCILMEMBER BEIER: The contested case --
5 two described in section --

6 MR. ROWE: Okay. I see it now. Thank you.

7 COUNCILMEMBER BEIER: Councilmember Beier.
8 I know the intent is to give very clear and objective
9 standards so I think notice within -- notice to property
10 owners of record within a certain distance would be
11 appropriate.

12 VICE CHAIR HOWE: Since we don't know what
13 that distance is right now, is that something staff can
14 come back to us with tomorrow when we come back to this?
15 I hate doing that but --

16 MS. TARDAEWETHER: For the applicant
17 construction contractor to do a mailed notice to some --
18 to property owners within blasting of some unknown
19 distance?

20 COUNCILMEMBER BEIER: Give more direction
21 within a certain time frame, at least a week in advance
22 or something, and I can look at our county code language
23 tonight to see if I can find something specific.

24 I don't mean to be so onerous. But when you
25 give notice, it's good to get the notice to the people

1 Ann, if you read on in this condition, it talks about
2 giving written notice at the points of entry. Warning
3 signs would be included -- would include information on
4 blasting, including the general hours of blasting might
5 take place. Access points to areas where blasting would
6 take place would be blocked.

7 I -- I know what you're asking and I think
8 that's very considerate of the landowners who are going
9 to receive the greatest amount of impact. And they may
10 want to stand there and hold their dishes or something.

11 But -- just I'm worried about -- I'm worried
12 about adding to the condition -- this is -- I guess is a
13 question for Jesse.

14 Does this open us up for additional
15 testimony, you know, on the condition?

16 MR. RATCLIFFE: So the standard for changes
17 to the proposed order is whether there's a material
18 change. And, you know -- and if that's the case, then
19 you have a hearing that's specific to the material
20 change.

21 Now, the question is what is a material
22 change? And, you know, generally speaking, a change to
23 the outcome, you know, of -- you know, obviously a -- do
24 they meet the standard or do they not meet the standard?
25 Well, that's clearly material. Conditions I would, you

1 know -- I would recommend that you view changes to
2 conditions as material. Those are, at the end of the
3 day, things that the applicant must do.

4 Now, this is, you know, in some ways a -- a
5 kind of minor technical change. It may really matter to
6 people on the ground. So I'm not saying it's minor from
7 that perspective.

8 But in terms of what we're asking of the
9 applicant to do, it's not a -- you know, some kind of
10 categorical, you know, this is really different. It's
11 notice. It's still notice. How do you do the notice?

12 But, to be conservative, I would suggest
13 that if you're looking at changes to conditions that
14 you -- you know, you give an opportunity that you
15 consider that material and have an opportunity for --
16 for comment on that.

17 SECRETARY CORNETT: For the record, Todd
18 Cornett.

19 If I may just, procedurally, the way we have
20 this structured, would be if we conclude all of the
21 exceptions in these three days, then we have Council's
22 direction. That's what we're seeking here through all
23 these straw polls is Council's direction on the proposed
24 order and any changes, as well as the proposed contested
25 case order and any changes.

1 And without being able to offer very
2 specific recommendation, we can -- we can move on.
3 But -- thank you.

4 VICE CHAIR HOWE: Okay. We've been at this
5 for almost three hours. Maybe break time. But do we
6 want to finish this one item and then take a break for
7 grabbing supper?

8 So where's the Council on this issue, notice
9 and giving direction to staff and changing the proposed
10 order?

11 COUNCILMEMBER JENKINS: I guess I agree with
12 Ann. You know, it's appropriate, I think, to give
13 people within a half mile of blasting -- of blasting
14 site notice in advance. And the -- the standard -- the
15 condition right now requires one week in the newspaper.

16 I think simultaneous with the one week in
17 the newspaper, you gave notice to the adjacent
18 landowners within a half mile.

19 VICE CHAIR HOWE: Councillor Condon.

20 COUNCILMEMBER CONDON: I agree with that,
21 and I'm wondering also in the posting of signs, there's
22 no indication about when they are posted.

23 Like, are they posted on the day that
24 blasting occurs? I think it would be helpful to have
25 some time period, like the week before, you know, as

1 We would then, in the coming weeks, issue a
2 draft of a final order. It's not a final order. It is
3 a draft of a final order to reflect what we hear from
4 Council. And we would identify any material changes.

5 So this would be an example, as Jesse said,
6 of a material change. We would identify this as a
7 material change. And then at the next Council meeting
8 where you're reviewing -- it's a two -- it's a two-stage
9 sort of process where you would then conduct a material
10 change hearing and allow people to provide comment on
11 those material changes. So this could be -- could be
12 one of them.

13 And then if -- if you're ready, then you
14 would be, potentially, to issue a draft -- sorry, a
15 final order and make a final decision on the project.

16 So, again, just kind of procedurally, any
17 time you're going through the proposed order, proposed
18 contested case order and you're making material changes,
19 as Jesse mentioned, those would constitute an ability to
20 make a --

21 MR. RATCLIFFE: So not now.

22 COUNCILMEMBER BEIER: I just want to thank
23 you all for your patience with me, because this is the
24 first time I've been through this. And knowing that the
25 material changes triggers another hearing is important.

1 long as we're making changes. It just seems to me that
2 people in the notice -- or in the area should have as
3 much notice as possible -- prior notice. Thank you.

4 COUNCILMEMBER JENKINS: And since they
5 know -- I mean, they have got to give the notice in the
6 newspaper and adjacent landowners within a week. They
7 should be able to put the signs up within a week also.

8 COUNCILMEMBER TRUITT: Jordan Truitt, for
9 the record.

10 I'm no blasting expert and no doubt there is
11 a -- statute rules -- probably as big as this binder for
12 blasting. And I'm a little hesitant to speculate as to
13 what the appropriate notice or radius might be without
14 knowing those rules. So I agree with what you're
15 saying, "proper notice."

16 But my -- I fall back to proper notification
17 within the rules of requirements for blasting activity
18 in urban-type settings or within proximity to population
19 centers. So without knowing what they are, I do think
20 it's a valid concern.

21 VICE CHAIR HOWE: And staff can come back
22 with that.

23 Councillor Chocktoot.

24 COUNCILMEMBER CHOCKTOOT: Yeah. Perry
25 Chocktoot, for the record.

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1 Depending on the geotechnical investigation,
 2 blasting could be pretty hazardous, so early warning is
 3 going to be the better.
 4 So I agree.
 5 VICE CHAIR HOWE: Okay. Does staff have
 6 what you need for this?
 7 SECRETARY CORNETT: So can you let me know
 8 what the condition number is again?
 9 MS. ESTERSON: Should be soil protection
 10 condition 4.
 11 MR. RATCLIFFE: No. It's actually at the
 12 end of structural standard condition one.
 13 MS. ESTERSON: I don't think that's where we
 14 should put it.
 15 MR. RATCLIFFE: That's where the language is
 16 now that Councillor Beier has pointed out that she would
 17 like to have supplemented.
 18 So if you look at the proposed order, pages
 19 82 to 83, that's the language she's referencing.
 20 MS. ESTERSON: That's not condition
 21 language.
 22 (Sotto voce discussion.)
 23 MS. TARDAEWETHER: So what I have on my
 24 screen here -- write it down.
 25 So under the structural standard, we talk

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1 about -- we include a provision -- and I'm just walking
 2 through so we can kind of just all get oriented here.
 3 We added in, in the proposed order, this
 4 reference to kind of the submission process to include
 5 and contemplate. It's kind of connecting structural
 6 with the soil protection standard because the blasting
 7 plan is imposed underneath the soil protection standard.
 8 And so this component of the -- the
 9 structural standard is kind of connecting the two.
 10 And so what we often do is under one
 11 standard we also say, like, we kind of -- these are
 12 interconnected. And so this bulleting here that you see
 13 on proposed order page 83, I believe, is staff's summary
 14 of the information in the draft blasting plan that is
 15 imposed under recommended soil protection condition
 16 four.
 17 Okay. So -- and soil -- and I'm just going
 18 to summarize. Soil protection condition four, like some
 19 conditions, some are very detailed. Some of them say,
 20 hey, do that plan, finalize that plan, do that plan.
 21 So, really, where we should be going is to
 22 the plan rather than modifying any condition.
 23 However, as Jesse was talking about, because
 24 functionally the condition says, do the plan. If you
 25 change the plan, this would still be considered a

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1 material change. So I'm going to try to pull up the
 2 blasting plan.
 3 MS. ESTERSON: The best level of detail is
 4 there that you're looking at.
 5 MR. RATCLIFFE: Maybe is this the time --
 6 have we finished structural standard five? Or the --
 7 SECRETARY CORNETT: Yeah. So we already
 8 conducted the straw poll on structural standard issue
 9 five, and so we're now just into the proposed order. So
 10 we're going back into what the proposed order findings
 11 and conditions are.
 12 MR. RATCLIFFE: Specific language for the
 13 proposed order?
 14 SECRETARY CORNETT: Well, we're going to
 15 need something. So right now we have a proposed order.
 16 MR. RATCLIFFE: Right.
 17 SECRETARY CORNETT: That proposed order is,
 18 essentially, what is on the books. Only those issues
 19 that are in the contested case were challenged.
 20 So you're going back to the proposed order
 21 to make changes. And so we need some clarification as
 22 to what you want to do and why in order to justify
 23 specific language. So you can certainly give us clarity
 24 and guidance but enough specificity so we can actually
 25 do that.

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1 So say -- and I'm not picking on you. We
 2 want to do notice. That's not good enough. Frankly,
 3 it's not good enough.
 4 You need to be very clear as to when; how
 5 frequent; you know, in what form; how wide out; in what
 6 sort of -- so the details can be filled.
 7 Because we can't just sort of generate a
 8 concept of a notice out of thin air based on what you
 9 are saying. This is not a notice that's in our rules
 10 related to property owner notification.
 11 If it was a property notification for a
 12 draft proposed order, we have that framework set. We're
 13 all good there. You're creating something completely
 14 different.
 15 This was not evaluated during the draft
 16 proposed order. There was no comments on this. So
 17 you're creating this out of thin air today. So we need
 18 the details and the specificity from you in order to be
 19 able to reflect this in a draft of a final order.
 20 COUNCILMEMBER CONDON: Chair Howe?
 21 VICE CHAIR HOWE: Councilmember Condon.
 22 COUNCILMEMBER CONDON: So, Todd, I don't see
 23 how we're creating this from thin air.
 24 So we have it in -- the proposed order --
 25 that newspaper one week prior.

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1 If we say, now there's mail notices one week
 2 prior --
 3 SECRETARY CORNETT: But to whom? How? In
 4 what form? Who is going to be giving those?
 5 Is it the Department's responsibility?
 6 Is it the applicant's responsibility?
 7 What's the nature?
 8 Is -- there has to be some specific form --
 9 again, where we have very clear rules about
 10 notification, it says when we have to do it, how we have
 11 to do it, clearly what has to be in the notice itself to
 12 meet the requirements.
 13 So, just saying, notice that's -- that's not
 14 guidance to us or a construction contractor.
 15 So if you're saying the same information
 16 that's in the notice in the newspaper needs to be put in
 17 a property owner notification and that needs to go out
 18 at a minimum of one week prior to all the people on the
 19 most recent property owner tax rolls on the county
 20 assessor records, that's something we can work with.
 21 Just simply saying "notice"; again, we don't
 22 know what that means. You have to be specific as to,
 23 you know, what we're talking about here.
 24 And so it's not creating it out of thin air.
 25 So that was probably not the right characterization.

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1 But the property owner notification does not
 2 exist right now. And so what your purpose and intent of
 3 that is needs to be clear to us.
 4 COUNCILMEMBER BEIER: Chair Howe, I think as
 5 Kellen and Sarah mentioned, there's more detail in the
 6 requirements for a blasting plan, and if you can direct
 7 us to that and see if these issues are already addressed
 8 in that very specific plan requirement, we won't need to
 9 modify this.
 10 If not, I agree with Secretary Cornett that
 11 we do need to be very specific in what we're asking the
 12 applicant or the applicant's contractor to do. And I
 13 think there are good examples out there. There's a
 14 reference to the blasting code that probably has very
 15 specific requirements.
 16 So I think, perhaps, tabling this for now so
 17 we can do some homework, knowing that it's something we
 18 may want to add some language on, but -- but being
 19 prepared to come back with something more specific so we
 20 can move on to other issues as --
 21 SECRETARY CORNETT: So, again, procedurally,
 22 we did put a placeholder at the very end on Wednesday.
 23 So if there are any unresolved issues like this, if
 24 you're -- if you think you want to be -- do it but
 25 you're not sure of the specifics, we do have some time

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1 to work that out before the conclusion on Wednesday.
 2 COUNCILMEMBER BEIER: Thank you.
 3 And thank you for your patience, fellow
 4 councilmembers.
 5 VICE CHAIR HOWE: Where's the Council on
 6 this?
 7 Ready to punt to Wednesday on this issue or
 8 keep working on it?
 9 COUNCILMEMBER JENKINS: Yes. So -- this is
 10 Hanley.
 11 Do we know the specifics -- specific
 12 requirements for the blasting plan?
 13 MS. ESTERSON: The draft framework blasting
 14 plan and we have a table of contents and general
 15 information under each of the table of content
 16 components. So it still has to be finalized.
 17 We have referenced some of the NFPA
 18 requirements that were cited to us by DOGAMI as what
 19 might apply for monitoring seismic shaking during
 20 blasting. This isn't a plan designed to demonstrate
 21 compliance with all blasting requirements. So it
 22 doesn't currently detail any of that.
 23 But those that we thought folded in to
 24 structural standard based on our consultation with
 25 DOGAMI are referenced.

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1 VICE CHAIR HOWE: Yeah. I wanted to finish
 2 structural standard five before we took a break. Come
 3 back and pick up financial assurance standard one.
 4 We're still on it.
 5 SECRETARY CORNETT: We're still on the
 6 structural standard. We are done with structural -- the
 7 contested case issue five or the structural standard
 8 issue five.
 9 So just for clarification, everything
 10 else -- sorry -- is that loud -- everything else in the
 11 structural standard is okay. So you're good with that
 12 in the proposed order.
 13 It's just the question of the blasting
 14 notification -- okay. So, at least -- again, I think
 15 with that, we have time to, you know, either you do or
 16 we do have the ability to think through a little bit and
 17 have some kind of straw proposal for Wednesday as long
 18 as that's the only issue.
 19 But I would say if there are other
 20 unresolved issues, we should continue working through
 21 those.
 22 COUNCILMEMBER JENKINS: No, I think
 23 that's -- this is Hanley.
 24 As far as I'm concerned, that's the only
 25 unresolved issue.

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1 And I do agree with Ann's interest in
 2 notifying the adjacent landowners or nearby landowners.
 3 And I understand the Department's position
 4 that we need to be specific about how we do that or how
 5 we recommend we do that.
 6 It's not -- if it's the same thing as the
 7 newspaper notice, then is it to the occupants or is it
 8 to the landowners, and, you know, so forth and so on. I
 9 think we need to be clear about that.
 10 So I think it's a Wednesday issue.
 11 SECRETARY CORNETT: So then I would
 12 recommend at this point taking a break. Dinner is here.
 13 So however long Council wants to take a
 14 break. It is designed as a "working lunch." We're
 15 already about an hour behind on the schedule for tonight
 16 for the three issues that we want to get through, or
 17 three standards we want to get through.
 18 So, again, take as much break as we need to,
 19 but shouldn't linger too long since it's already 7:05.
 20 VICE CHAIR HOWE: Council, how long do you
 21 want? Just get it and come back?
 22 Okay. Take a 15-minute -- it's 7:05. So at
 23 7:20 we'll be running again.
 24 No. No. This is what this is for.
 25 (A break was taken from.

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1 7:05 p.m. to 7:22 p.m.)
 2 VICE CHAIR HOWE: Standard in issue RFA-1.
 3 So, Ms. Tardaewether, you're on.
 4 MS. TARDAEWETHER: Thank you, Vice Chair
 5 Howe.
 6 I'm looking over at our -- just waiting for
 7 our PowerPoint to get queued up.
 8 For the record, Kellen Tardaewether, Oregon
 9 Department of Energy.
 10 So while we're getting the PowerPoint queued
 11 up in its PDF format, just kind of talk about -- we've
 12 talked quite a bit about the retirement and financial
 13 assurance standard. For other projects I feel like
 14 Council is pretty familiar with the standard, but I
 15 think this is a good opportunity to remind Council about
 16 the interconnectedness and between our -- our standards.
 17 And part of under "retirement," we do look
 18 to findings of fact and conclusions of law under the
 19 organizational expertise standard. And in July, we did
 20 review the organization -- organizational expertise
 21 standard and Council didn't have any revisions
 22 underneath that standard. So just kind of reminding
 23 Council there that we -- we kind of looked at that but
 24 organizational expertise also has an aspect that relies
 25 on retirement. So we're just kind of keeping these in

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1 mind.
 2 You guys working on the PowerPoint?
 3 Okay. Well, we're -- the one right above
 4 that. So you're -- yep. With just the standard
 5 language. Yes, correct.
 6 And Crystal, the court reporter, are you
 7 still with us?
 8 THE COURT REPORTER: Yes.
 9 MS. TARDAEWETHER: Okay. Great. And we'll
 10 all try to speak loudly and enunciate. And also talk
 11 slow, but also fast. Sorry.
 12 The Council's retirement/financial assurance
 13 has two aspects. One, that -- can the applicant --
 14 taking into account mitigation, can they ensure that the
 15 site would be restored to a useful nonhazardous
 16 condition; and then the second aspect is that there's
 17 reasonable likelihood that -- that the applicant can
 18 obtain a bond or a letter of credit in a form and an
 19 amount satisfactory to the Council to restore the site
 20 to that useful and nonhazardous condition.
 21 So the applicant represents that the useful
 22 life of the facility is approximately a hundred years.
 23 This is longer than Council sees for some other
 24 facilities. This is also something that is asked to be
 25 presented in the application that we then rely in our

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1 findings.
 2 So the applicant says that the transmission
 3 line would -- the approximate life span is about a
 4 hundred years.
 5 But, really, it expects it is going to
 6 remain in operation, functionally in perpetuity.
 7 The applicant and its parent company,
 8 IDACORP, they've been in operation -- or the company
 9 originated in 1915.
 10 So we talked about this under the
 11 organizational expertise. This is a regulated utility
 12 in Oregon and Idaho. They have constructed and operated
 13 several transmission lines that have been in the -- in
 14 operation for long periods of time. And that over time,
 15 the transmission lines get upgraded and maintained to --
 16 to where they do have and can safely operate within
 17 these longer durations and time spans, because that is
 18 the transmission structure of our energy system.
 19 So let me see.
 20 The next slide, Wally or Nancy. Now --
 21 nope. The one with the table on it, so maybe the
 22 previous one. Sorry. Okay.
 23 I have the -- the table that has -- that
 24 Council is used to seeing where we break out and we talk
 25 about the tasks of how would this facility be retired.

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1 And the assumption is that it's "full buildout."
 2 Can you go to the slide with the table on
 3 it?
 4 I think it's the one right before this.
 5 Yes. And that's impossible to see, so
 6 you're welcome.
 7 I can find the -- I can find the page on
 8 your proposed order, though.
 9 So this task -- that's kind of helpful.
 10 It breaks out, all the line items on our
 11 retirement when we do the cost estimating to get the
 12 estimated bond amount to retire the entire facility, it
 13 is at full buildout. So we're maximum footprint,
 14 maximum everything. It's on your proposed order page
 15 296, this table is.
 16 So -- and -- and it -- the discussion of the
 17 activities to restore the site are kind of reversed
 18 construction. So we're taking down the poles, taking
 19 down the cabling, removing an EFU land, the foundations
 20 for the transmission structures, and all of those get
 21 reviewed and a price tag put next to them.
 22 One of the major components for the facility
 23 are the related supporting facilities which are the
 24 roads. Or one of them is the roads. Roads would be,
 25 you know, de-compacted, re-seeded. If new soil would

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1 need to be brought in, that would happen. The road
 2 restoration would be a pretty significant component
 3 to -- to retiring the facility.
 4 So -- sorry for my pause here, folks.
 5 Okay. So now -- next slide, please, Nancy.
 6 So Council looked at this standard in its
 7 review of the draft proposed order and actually had a
 8 pretty robust discussion underneath this standard.
 9 In the proposed order, your recommended
 10 financial assurance condition five, which is the bond
 11 that applies during operation is related to a contested
 12 case issue, so I'm going to leave that for Jesse to talk
 13 about. But just kind of reminding Council, because
 14 Council is kind of a different Council, then, that we
 15 did actually -- some of those revisions that you see in
 16 the proposed order for condition five came out of
 17 Council's deliberation and discussion and direction to
 18 staff at its review of the draft proposed order.
 19 So I'm going to just talk briefly about
 20 financial assurance condition four.
 21 So this is a condition that the applicant
 22 proposes to apply during construction.
 23 And it says -- because we're kind of going
 24 back to the general standard of review condition that
 25 said we're going to give them four years to begin

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1 construction. And once they start, they can have four
 2 years to complete construction, so we're kind of looking
 3 at four years to build this facility.
 4 And what this condition says -- and I'm
 5 paraphrasing because this is a pretty long condition,
 6 but it basically increases the -- the bonding amount to
 7 reach -- which, I'm sorry -- at that table, the -- the
 8 total is about \$140 million that we're saying would be
 9 appropriate to restore -- retire and restore the site.
 10 Retire the facility; restore the site.
 11 So this condition four says that during
 12 construction, every quarter, the amount would increase
 13 giving to that 140, which would then also be adjusted
 14 based on, you know, the inflation factors, et cetera.
 15 Each quarter going -- getting up to the \$140 million and
 16 this is to cover -- to contemplate that as time goes
 17 forward, there's more facility on the ground that would
 18 then -- if needed to be retired that it would -- the --
 19 yes, the bond amount would be commensurate with the
 20 amount of facility that would be on the ground
 21 throughout the construction period.
 22 And I think that -- I'm just going to stop
 23 there.
 24 Did you have anything you wanted to add?
 25 Yeah. Stop there and I will -- well, I'll pass it off

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1 to Jesse. But we can kind of take a pause.
 2 Does Council have any questions about how we
 3 generated that 140? The table.
 4 VICE CHAIR HOWE: Questions from Council?
 5 Looks like not.
 6 MS. TARDAEWETHER: Okay. Great. I'm going
 7 to pass it off to Jesse.
 8 And then -- so will you guys go to the next
 9 slide, Nancy.
 10 So next one. Yes.
 11 MR. RATCLIFFE: Okay. Thank you, Kellen.
 12 So we have one contested case issue that
 13 drew exceptions for retirement and financial assurance
 14 standard, RFA-1. The party is Irene Gilbert. The issue
 15 that was raised in the contested case is whether the \$1
 16 bond amount adequately protects the public from facility
 17 abandonment and provides a basis for the estimated
 18 useful life of the facility.
 19 So the hearing officer's findings of fact
 20 and opinion on this are that the Council rules give
 21 discretion to the Council to allow an amount less than
 22 the full site -- full cost of site restoration; that the
 23 rule allows for the certificate holder to have a bond or
 24 letter of credit in a form satisfactory to the Council.
 25 The site certificate condition, one of the

1 mandatory site certificate conditions, and, again,
2 we're -- you know, a lot of the conditions that we're
3 talking about here in these contested case issues are
4 conditions that were added. Either they were proposed
5 by Idaho Power or they were requested by the Council or
6 they were proposed by staff to ensure that the standards
7 are met.

8 But there are a set of mandatory conditions
9 in the Council's reviews.

10 One of these conditions allows for the bond
11 or letter of credit amount to differ during construction
12 and operation.

13 The hearing officer went on to find that the
14 dollar bond was proposed by Idaho Power once the
15 facility is operational because of a lower risk as a PUC
16 regulated facility.

17 And it's a significant cost, roughly
18 \$880,000 a year to maintain the bond would be passed on
19 to ratepayers.

20 The hearing officer also looked at Idaho
21 Power's credit rating, concluding that it had access to
22 secured and unsecured credit at reasonable rates and
23 under acceptable terms.

24 For example, pointing to \$300 million credit
25 facility with a syndicate of large financial

1 understand?

2 Okay. Irene Gilbert here and I've requested
3 an exception to the proposed contested case order
4 failing to require the developer to maintain a bond in
5 the amount established by Council to restore the
6 facility site to a useful nonhazardous condition.

7 In the alternative, I have identified three
8 site certificate conditions which I'm requesting be
9 implemented to provide protection to the public and the
10 state from facility abandonment or default from any
11 unplanned event.

12 The necessity of requiring a bond is
13 supported by the fact that it is identified as a
14 mandatory site certificate condition and Council rules
15 specifically deny the Council the authority to use a
16 balancing determination in the evaluation of this rule.

17 I identified multiple issues of fact in the
18 form of statutes, rules, court decisions, and examples
19 of bankrupt companies which are being waived or
20 re-interpreted in the event Council approves a \$1 bond,
21 a reduced bond amount, and places the state and tax
22 payers in jeopardy.

23 The proposed contested case order fails to
24 identify the required facts and conclusions of law
25 regarding each of the arguments supporting a denial of

1 institutions.

2 In contrast, the hearing officer looked at
3 the evidence provided by the limited party and concluded
4 that there was insufficient evidence to support the
5 claim that the \$1 bond for the first 50 years of
6 operation is insufficient or that the facility is likely
7 to become obsolete or that Idaho Power will become
8 insolvent.

9 And then the final conclusion here is
10 related to an argument that was made by Ms. Gilbert
11 comparing solar facilities to the transmission line and
12 the hearing officer's conclusion that -- was that the
13 two were dissimilar enough that they didn't serve as a
14 useful comparison to a PUC regulated major transmission
15 line.

16 So that is an overview of how the hearing
17 officer dealt with that and how it was written up in the
18 proposed contested case order.

19 So I'd like to go ahead and have -- with
20 Vice Chair Howe's leave to call Ms. Gilbert to provide
21 her three minutes of oral argument. And again, the
22 reminder that the oral argument and any responses should
23 be limited to information that is already in the
24 evidentiary record.

25 MS. GILBERT: Am I on? Am I easy to

1 this contested case. Multiple court decisions limit
2 Council authority to waive or interpret rules or
3 statutes to rules that are genuinely ambiguous,
4 including Gonzalez versus Oregon and the U.S. Supreme
5 Court decision in "Kisor versus Wilkie," which also
6 requires the interpretations to be reasonable and that
7 there cannot be a new interpretation that creates unfair
8 surprise to regulated parties.

9 While the Department and Idaho Power will
10 argue that EFSC is not bound by U.S. Supreme Court
11 decisions, the Council should carefully consider whether
12 it is prudent to accept such an argument.

13 The Council does not have unlimited power to
14 interpret and re-interpret rules and statutes of the
15 agency.

16 The Oregon Supreme Court in recent rulings
17 stated that the Council acted, quote, "without a
18 reasonable basis in fact or law."

19 You are being asked to apply the actual
20 unambiguous language of the Council rules regarding the
21 required bond amount and do so in the manner that is
22 consistent with the Council decisions before and after
23 B2H, including requiring the bond amount to be the
24 amount that Council identified as necessary to restore
25 the site, which has always been interpreted as the

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1 amount satisfactory to the Council for the bond.
 2 Your decision needs to be consistent with
 3 the recommendations from your consultant, Golder and
 4 Associates and the amounts being required of other
 5 developers, also the training that you received from
 6 ODOE staff.
 7 The risk of requiring use of a bond is
 8 always going to be minimal.
 9 As with any insurance, it is to protect from
 10 the unlikely but possible events. The file -- the file
 11 fails to document that there is a preponderance of
 12 evidence that the rules and statutes requiring a bond
 13 are being met. I urge Council to reject the denial of
 14 this contested case and site certificate conditions as
 15 the current bond amount fails to meet the requirements
 16 that the interpretation be reasonable and not create
 17 unfair surprise. Thank you.
 18 VICE CHAIR HOWE: Thank you, Ms. Gilbert.
 19 Are there any questions from Council of
 20 Ms. Gilbert?
 21 Okay. Thank you.
 22 MS. RACKNER: Good even, again.
 23 Lisa Rackner for Idaho Power.
 24 In her exceptions, Ms. Gilbert argues that
 25 the Council's rules prohibit it from taking a flexible

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1 approach to its bonding requirements to recognize
 2 specific risks presented by each project.
 3 But as a matter of law, the Council does
 4 have that flexibility. And as a matter of policy, the
 5 Council should exercise that flexibility in this case.
 6 First, as a matter of law, the Council's
 7 rules quite clearly allow the Council to exercise its
 8 discretion as to the appropriate amount of a bond.
 9 The rules state that in order to issue a
 10 site certificate, the Council must find that the
 11 applicant has a reasonable likelihood of obtaining a
 12 bond or letter of credit in a form or amount
 13 satisfactory to the Council.
 14 That language, "satisfactory to the
 15 Council," plainly indicates that the Council is to
 16 exercise its judgment as to the appropriate amount of
 17 the bond.
 18 It's also consistent with mandatory
 19 condition eight, which repeats that the bond must be in
 20 a form and amount satisfactory to the Council.
 21 Ms. Gilbert's interpretation would require
 22 the Council to completely ignore the critical language
 23 in the rules which is inconsistent with basic rules of
 24 statutory construction.
 25 Moreover, as a matter of policy, B2H's

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1 application confirms that a phased-in bonding approach
 2 is reasonable.
 3 And I want to quickly say, the bond doesn't
 4 stay at \$1 for the entire life. The bond is designed to
 5 increase up to the full decommissioning amount by one
 6 hundred years. So it starts at year 50 increasing on a
 7 regular basis.
 8 The cost to maintain a bond is high and --
 9 and as Mr. Ratcliffe said, would be borne by ratepayers.
 10 Moreover, the risks that the company would ever retire
 11 B2H before 100 years is extremely low.
 12 High voltage transmission lines are designed
 13 to operate in perpetuity and the company couldn't find
 14 any example of a 500 kV line that was ever
 15 de-commissioned.
 16 Additionally, it's well understood that one
 17 of the most daunting challenges to achieving the
 18 greenhouse gas reductions required of Oregon's electric
 19 utilities is the need to significantly increase, close
 20 to doubling, the amount of transmission capacity that we
 21 have. Given the urgent need for this capacity, it is
 22 hard to imagine that B2H would be retired before the end
 23 of its useful life.
 24 And, finally, even in the unlikely scenario
 25 that the line did need to be conditioned, it's highly

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1 unlikely that the company would default on its
 2 de-commissioning obligations, given its financial
 3 strength and its status as a public utility that's been
 4 in existence for a hundred years.
 5 And I do want to briefly mention,
 6 Ms. Gilbert points to the fact that the Council did not
 7 allow a phased-in approach for the Bakeoven Solar
 8 Project. But that decision isn't on point, because
 9 Bakeoven wasn't similarly situated, as was pointed out
 10 by the hearing officer.
 11 Specifically, in that order, the Council
 12 stated that the developer is an independent power
 13 producer and not a public utility, which would have
 14 access to rate recovery authorization from the State PUC
 15 to dismantle and restore a facility.
 16 For those reasons, we ask you to adopt the
 17 hearing officer's recommendation to adopt a phased-in
 18 approach. Thank you.
 19 VICE CHAIR HOWE: Thank you, Ms. Rackner.
 20 Any questions from Council?
 21 Councillor Condon.
 22 COUNCILMEMBER CONDON: Councilmember Condon.
 23 Thank you for being here today for so long
 24 and something tells me for the next few days.
 25 Just a question for you.

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1 As you have done transmission lines in other
2 states -- I think I'm allowed to ask this -- do you have
3 security instruments on any of your transmission lines?
4 MS. RACKNER: So --
5 MR. RATCLIFFE: Before we do answer this
6 question, we do need to stick to what is already in the
7 evidentiary record.
8 I don't have the full record in front of me
9 right now, so I can't, you know, completely assure that
10 that's the case. But I would ask that we do stick to
11 what's in the record.
12 MS. RACKNER: And I'm really sorry, but
13 there's nothing in the record on that question.
14 COUNCILMEMBER CONDON: All right. Thank you
15 very much.
16 VICE CHAIR HOWE: Thank you, Ms. Rackner.
17 MR. ROWE: If I may quickly share the
18 Department's position with this contested case issue.
19 Patrick Rowe with the Department of Justice.
20 I do not want to repeat too much. I do -- as
21 Ms. Rackner stated, we disagree with Ms. Gilbert's
22 position that this is -- that Council is bound to
23 require bonding more than what has been proposed. As
24 Ms. Rackner pointed out, the rule gives Council
25 discretion. It's essentially what Council finds to be

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1 satisfactory to -- to comply with the standard or to
2 provide assurance. The Department believes that the
3 proposed gradual increase of financial assurance is
4 appropriate because it recognizes the low risk that the
5 proposed facility would be retired in the first several
6 decades of operation and the low risk that the applicant
7 would not be able to pay for decommissioning and
8 restoration if it were to be retired earlier. This
9 facility is distinct from other energy facilities that
10 come before Council for the reasons that Ms. Rackner
11 noted. It is not just an energy facility. It is a
12 transmission line being proposed by a utility with a
13 long history of operation and inability to recover cost
14 from ratepayers, if necessary.
15 A couple comments that Ms. Gilbert made in
16 her oral testimony. She referenced -- and it might have
17 kind of slipped through -- that Council is precluded
18 from applying a balancing determination to the
19 retirement and financial assurance standard. That is
20 correct.
21 And I will remind Council what the balancing
22 determination is.
23 The balancing determination says that if an
24 applicant comes to the Department and Council and says,
25 we don't think we can meet this particular standard,

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1 they can ask Council to apply a balancing determination
2 and assess whether the overall public benefits of the
3 proposal outweigh the adverse affect on the resource
4 that's protected by the standard.
5 So, for example, if it was the Fish and
6 Wildlife standard, they say, we can't meet that.
7 Well, Council could -- to balance and say,
8 well, do the benefits of this proposed facility outweigh
9 the impacts on Fish and Wildlife. That's not happening
10 here. The applicant has not said they can't meet the
11 standard, and the Department has not applied a balancing
12 determination to this standard.
13 Ms. Gilbert also mentioned Court decisions
14 that say -- that say Council is prevented from waiving
15 requirements.
16 Again, that's not what's happening here.
17 The Department is not recommending that
18 Council waive the retirement and financial assurance
19 standard.
20 It's to the contrary. The Department has
21 recommended how Council can find compliance with the
22 standard.
23 I see I'm running low on time, so that's all
24 I have for now. Thank you.
25 VICE CHAIR HOWE: Any questions?

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1 Councillor Condon.
2 COUNCILMEMBER CONDON: Councilmember Condon,
3 for the record.
4 Mr. Rowe, I think this question is
5 appropriate.
6 In the material, the cost to ratepayers is
7 included, and as far as EFSC is concerned, that does not
8 come under our purview or it is not within our
9 jurisdiction how much it is going to cost ratepayers; is
10 that correct?
11 MR. ROWE: That's correct. That's a public
12 utility commission issue.
13 COUNCILMEMBER CONDON: Thank you.
14 VICE CHAIR HOWE: Council?
15 Okay.
16 MR. RATCLIFFE: Okay. So, once again, now
17 that we've heard from everyone, you're free to ask me
18 any questions that you might want to in terms of legal
19 issues and, otherwise, this is open for deliberation.
20 COUNCILMEMBER JENKINS: This is Hanley.
21 VICE CHAIR HOWE: Ms. Condon.
22 COUNCILMEMBER CONDON: Condon. I -- as far
23 as the contested case is concerned, I don't have any
24 questions or concerns about that.
25 But I do have some concerns about the

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1 proposed order. And so I -- are we going to wait -- do
 2 we want to wait for that discussion, or --
 3 SECRETARY CORNETT: Excuse me, for the
 4 record, Todd Cornett. So we can either consolidate and
 5 make one sort of straw poll like I talked originally.
 6 But if you're -- concluded that you have --
 7 you agree with the hearing officer on the proposed
 8 contested case order and you just want to deal with that
 9 straw poll right now, we can deal with that and you can
 10 move back to the proposed order. It is entirely your
 11 choice.
 12 VICE CHAIR HOWE: It would be nice to check
 13 that off.
 14 SECRETARY CORNETT: Okay. So --
 15 COUNCILMEMBER JENKINS: I don't have any
 16 objections to the contested case order. This is Hanley.
 17 COUNCILMEMBER CONDON: Councilmember Condon,
 18 for the record. Thank you.
 19 The contested case order is taking into
 20 consideration the proposed order as we see it. Right?
 21 I mean, there -- she's -- the Administrative
 22 Law Judge has made a decision on the contested cases. I
 23 don't have any issues with that.
 24 So as long as -- as long as we have an
 25 opportunity to question the proposed order, good to go.

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1 SECRETARY CORNETT: Okay. So you want me to
 2 call the straw poll?
 3 Okay. So I have "The Council agrees with
 4 the findings of fact, conclusions of law and conditions
 5 of approval in the proposed contested case order
 6 pertaining to issue RFA-1."
 7 And if that sounds good, I will call Cindy
 8 Condon.
 9 COUNCILMEMBER CONDON: Yes.
 10 SECRETARY CORNETT: Jordan Truitt.
 11 COUNCILMEMBER TRUITT: Yes.
 12 SECRETARY CORNETT: Ann Beier.
 13 COUNCILMEMBER BEIER: Yes.
 14 SECRETARY CORNETT: Hanley Jenkins.
 15 COUNCILMEMBER JENKINS: Yes.
 16 SECRETARY CORNETT: Perry Chocktoot.
 17 COUNCILMEMBER CHOCKTOOT: Yes.
 18 SECRETARY CORNETT: Kent Howe.
 19 VICE CHAIR HOWE: Yes.
 20 SECRETARY CORNETT: Thank you.
 21 VICE CHAIR HOWE: So we're back now to the
 22 proposed order on retirement and financial assurance
 23 standard one.
 24 So councillors have comments?
 25 Councillor Condon?

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1 MS. TARDAEWETHER: And I'm -- I'm -- Kellen
 2 Tardaewether here.
 3 I'm passing the ball to the extent there's a
 4 little bit of lag, but I'm trying to pull it up here.
 5 COUNCILMEMBER CONDON: This is Councilmember
 6 Condon. And I will repeat it. I would like to turn the
 7 attention to recommended retirement and financial
 8 assurance condition five, and I think it's now brought
 9 up on the screen.
 10 With respect to -- I think, as we've
 11 discussed, this project is very different than some of
 12 the others we've discussed in the past. But I also
 13 think that 50 years is a very long time and obviously a
 14 hundred years is even longer.
 15 And I -- I question the \$1 for the first 50
 16 years. This is a changing industry, and I think we're
 17 going to see more change in the next 20 years than we've
 18 seen in the last 70.
 19 And so from a financial perspective, it
 20 strikes me that we -- by conditioning this project, as
 21 we have suggested here, we are putting Oregon taxpayers
 22 as the backstop should something happen. It might not
 23 be likely, but it could happen.
 24 And, certainly, given the changes in energy
 25 per generation, just everything that's going on in -- in

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1 energy. And what I would like to see here, right now,
 2 the added language was -- in red, in the document, is
 3 "the Department shall review the five-year report."
 4 So Idaho Power would be obligated to do a
 5 five-year report.
 6 And I would like the report to be annual.
 7 And -- or I'd like to see it as an annual report, and,
 8 in addition, that -- or "at any time required by the
 9 Council."
 10 Should something happen, wildfire,
 11 bankruptcy, some event that would cause us concern in
 12 terms of the -- the conditions we put on that they
 13 obligate taxpayers of the state to be that backstop, I'm
 14 uncomfortable.
 15 So -- so I would like us to retain the
 16 ability to always come back and say we need a bond to
 17 speak to the risk.
 18 VICE CHAIR HOWE: Cindy, I'm not clear on
 19 what you're asking.
 20 Are you asking that a five year be changed
 21 to one year?
 22 COUNCILMEMBER CONDON: That's right. I
 23 would like to see an annual report. I'm pretty sure a
 24 public company has to do an annual financial report and
 25 I don't think that would be a burden to the

1 organization.
 2 But, additionally, that we would have the
 3 right at any time to require information and should that
 4 information suggest more risk than we had intention of
 5 here, that we could require additional security at any
 6 time.
 7 COUNCILMEMBER CHOCKTOOT: Chair, this is
 8 Perry Chocktoot.
 9 And for the record, a \$1 bond, it just
 10 doesn't seem practical to me that something on this
 11 level of cost and this level of -- of making profit that
 12 a dollar is kind of strange.
 13 I hope I'm able to talk about it. Sorry if
 14 I'm not.
 15 VICE CHAIR HOWE: Any other Council
 16 discussion?
 17 Where is the rest of the Council on --
 18 Councillor Condon's suggestion?
 19 MS. TARDAEWETHER: Can I ask a -- this is
 20 Kellen Tardaewether.
 21 Can I ask a clarification question?
 22 So making it annual and then -- or at any
 23 time Council requests, was that specific to the
 24 information that is specified in this report?
 25 Or are you saying that you want a different

1 State of Oregon. And it's a financial report that would
 2 tell us -- I mean, quite frankly, I'm not really sure
 3 what's intended here by a five-year report financial --
 4 I thought that to be a financial report.
 5 And maybe you were thinking just very
 6 differently. As I read it, I was thinking, "financial
 7 report."
 8 MS. TARDAEWETHER: Well, it's like a --
 9 well, the physical condition of the facility evolving
 10 transmission or electrical technologies, the facility's
 11 performance and the context of the larger power grid
 12 certificate holders or general financial condition
 13 concerning the certificate holder's credit rating at
 14 that time.
 15 COUNCILMEMBER CONDON: It's the financial
 16 report I'm focused on.
 17 And it's their financial ability to do what
 18 we want them to do for retirement and giving us the
 19 financial assurance.
 20 I don't see financial assurance here. So
 21 other than that, they are a regulated utility and have
 22 been in business for a hundred years. There are risks
 23 that we may not have any idea what those will be.
 24 COUNCILMEMBER JENKINS: So this is Hanley.
 25 And the burden really here is -- I mean, the

1 information of the examples you gave of, like, fire or
 2 risk -- that may increase the bond amount that those are
 3 kind of out of the scope of what was covered in this
 4 five-year report?
 5 When Council reviewed -- when we discussed
 6 this at the review of the DPO, like, on your onset of
 7 your comments, well, technology changes, we want to know
 8 what's happening out -- out, like, with the grid and
 9 with technology. And that's where this came from with
 10 the five years being a reasonable time, that maybe
 11 something would change.
 12 But I -- I just -- if what you were asking
 13 with those examples you gave to me, those are not --
 14 this is, like, technology and those are, like, risk
 15 things.
 16 COUNCILMEMBER CONDON: Yeah. Those weren't
 17 examples for me of information. It's financial
 18 information.
 19 What we're doing is saying you don't have to
 20 provide security.
 21 This is Councilmember Condon, for the
 22 record.
 23 This is security. We're willing to take
 24 that risk ourselves. And I'm uncomfortable with our
 25 doing that. It's not us. It's the taxpayers of the

1 information is being provided by Idaho Power, but the
 2 burden is on the Department to evaluate that five-year
 3 plan and include any other additional information as
 4 it's listed here in order to do that.
 5 So I'm not uncomfortable with the
 6 information that's being provided, because I -- you
 7 know, I think it does -- the certificate holder's
 8 general financial condition, and the Department is
 9 evaluating that as a part of that report that they
 10 receive from Idaho Power. I'm not sure that it's
 11 necessary every year. That, I guess, is my concern.
 12 It's --
 13 SECRETARY CORNETT: Scroll it so I can see
 14 the edition.
 15 MS. TARDAEWETHER: Thanks, Todd.
 16 There's just a little bit of a lag here. So
 17 I'm just trying to pull it up.
 18 Do you mean this right here? Right here?
 19 Okay.
 20 COUNCILMEMBER JENKINS: So, yes, my concern
 21 is we're talking about a transmission line. We're not
 22 talking about the solar facility or turbines. And we
 23 have no examples -- our testimony is that there are no
 24 transmission lines that have been taken down, and at
 25 least from what I'm seeing here, I think what is being

1 required in the report and by the Department's
 2 evaluation every five years is adequate.
 3 SECRETARY CORNETT: For the record, Todd
 4 Cornett. And the reason I wanted to scroll through is
 5 so you can see the full condition on the screen, is it
 6 does come to Council.
 7 So it is not just the staff's review. It's
 8 the staff's review and then the Council will consider
 9 whether the bond is required at that point in time. So
 10 it's not just us. It is Council -- you know, ultimately
 11 we're making the recommendation to you. But you make
 12 the decision at that point in time whether it's every
 13 five years or if you want to change it to some other
 14 frequency.
 15 COUNCILMEMBER CONDON: Right. And just in
 16 response to that. This is Councilmember Condon.
 17 Five years is a long time when things go
 18 wrong. So if we want to keep the five years, that's
 19 fine, as long as -- I would like to see something that
 20 says we have the opportunity at any time to ask for
 21 financial -- for -- for this information and make
 22 decisions accordingly. Not really asking for anything
 23 up-front for a pretty large project. And I would like
 24 to see us as having flexibility to analyze the situation
 25 as the situation changes.

1 enough to project what all of the instances are. But
 2 there certainly are instances that we've seen in the
 3 last five years that have impacted transmission lines,
 4 power generators.
 5 VICE CHAIR HOWE: Other councilmembers want
 6 to let us know your support or not of this proposal.
 7 COUNCILMEMBER BEIER: Chair Howe, this is
 8 Ann Beier for the record. I'm torn on this because I
 9 think it's reasonable to have the big bond during
 10 construction. And then to have a lesser bond during the
 11 initial operation. I like that there's the kick in at
 12 50 years, but it is a changing world, and having the
 13 ability to adjust the bonding.
 14 And I understand Idaho Power's position and
 15 they need some certainty, because they have to go in and
 16 ask for rates. But making sure that they maintain their
 17 financial health and -- doesn't strike me that this
 18 Council is going to ask for information just for the
 19 sake of having another report to review.
 20 It would be some changing circumstance that
 21 would -- would trigger that request. So I'm supportive
 22 of that additional language suggesting that the
 23 Department or the Council can request that the specific
 24 information as necessary or when needed.
 25 VICE CHAIR HOWE: Councillor Truitt.

1 VICE CHAIR HOWE: So it's proposed at five
 2 years now. Right? And Councillor Condon is suggesting
 3 it -- that stay the same, I guess, at five years. Or
 4 any time if the Council were to deem necessary to have
 5 it other than at the five-year interim.
 6 Where is the Council on that?
 7 COUNCILMEMBER JENKINS: So you do it after
 8 that first unlined sentence? Or at any time requested
 9 by the Department.
 10 I don't have a problem with that. This is
 11 Hanley. I don't have a problem with that.
 12 VICE CHAIR HOWE: Other Councillors?
 13 COUNCILMEMBER TRUITT: This is Jordan.
 14 Cindy, are you asking for the complete
 15 report at any time or just the financial report upon
 16 request? Financial condition.
 17 COUNCILMEMBER CONDON: Well, I would say the
 18 complete report, because we're trying to make -- we
 19 would be trying to make a decision based on a changing
 20 set of circumstances.
 21 Top foremost in my mind is the financial
 22 piece.
 23 VICE CHAIR HOWE: Would there be an event
 24 that triggered that or just at random upon request?
 25 COUNCILMEMBER CONDON: If I were smart

1 COUNCILMEMBER TRUITT: I'm torn as well.
 2 I'm comfortable with five years. I don't want to
 3 necessarily -- Councilmember Condon, I understand
 4 completely where you're coming from, but I also don't
 5 want to arbitrarily -- maybe it's not arbitrary. But
 6 unforeseen events open the door to what could turn into
 7 annual reports on request.
 8 It's a burden on both sides of the equation.
 9 I think there should be some sort of qualifier
 10 potentially in there. But, again, I'm -- or not.
 11 VICE CHAIR HOWE: Councillor Chocktoot?
 12 COUNCILMEMBER CHOCKTOOT: I'm also torn on
 13 it, too. But we have -- we have no way of knowing what
 14 the future brings. It might be enough just to put in
 15 the wording that "upon request," you get the report upon
 16 request.
 17 MR. RATCLIFFE: Vice Chair Howe, I don't
 18 want to overstep here, but I may have a suggestion that
 19 is from contract language that -- because I think I've
 20 heard the concern expressed that we don't want a future
 21 Council to act arbitrarily.
 22 Now, ordinarily, you know, there are legal
 23 protections against doing that. In -- you know, you are
 24 kind of an administrative exercise. This is the way
 25 that the -- the statutes that govern siting work.

1 There's this concept that the site certificate is a
2 contract. And so it binds the Council just as much as
3 it binds the applicant. You know, if there's a concern
4 about a future Council acting arbitrarily, well, you
5 know, because you put in kind of carte blanche to
6 request a report wherever, whenever, a typical thing you
7 will see in contract language is just the Council may
8 reasonably require that there's some kind of concept
9 that you can't ask for this just because you need to --
10 you need to have a stated basis for it.

11 And that would, you know, put things more in
12 line with the notion of how the Council has to conduct
13 itself in -- you know, its regular decision-making.
14 Even when you have discretion, you don't have discretion
15 to be arbitrary. You have to provide reasons for what
16 you're doing.

17 So I -- you know, because you are right.
18 You can't predict all potential future circumstances in
19 which, you know -- with hindsight you might want to see
20 a piece of information.

21 And so that's a tool that we'll sometimes
22 use to try to -- to hedge against that is -- you know,
23 provide some comfort to the other party that we're not
24 just going to ask for it for fun, which I can't imagine
25 anyone doing anyway.

1 wants to go.
2 COUNCILMEMBER CONDON: Councilmember Condon
3 here, and that works for me.

4 MR. ROWE: ... DOJ.
5 My understanding, Councilmember Condon, was
6 that you were asking that Council be allowed not just to
7 require them to provide the report but also,
8 potentially, revise the financial assurance that is
9 required if the information provided in the report
10 causes you concern; is that correct?

11 COUNCILMEMBER CONDON: Isn't that already
12 included in the language?

13 VICE CHAIR HOWE: It is part of the report.

14 COUNCILMEMBER CONDON: Part the right of the
15 Council. Yeah.

16 SECRETARY CORNETT: Yeah. Kind of scroll
17 up. That would be the follow-up. If the Council deems
18 it appropriate and necessary would be to require the
19 full bond or some other amount at that point in time
20 based upon the report and their evaluation.

21 COUNCILMEMBER CONDON: Councilmember Condon
22 here.

23 The last sentence on page 303, "the
24 certificate holder shall be subject to Council's
25 determination."

1 But -- but that you still have the ability
2 to get the information if you needed.

3 VICE CHAIR HOWE: Thank you. I think that
4 I'm on board, too.

5 I think there's a consensus there that this
6 language would work.

7 Do you want to do a straw poll?

8 SECRETARY CORNETT: I can, at least,
9 read what I have and you can kind of give me the "head
10 nod" if that sounds good and I'll call the vote or you
11 can make a change.

12 So what I have is "Agree with the findings
13 of fact, conclusions of law, and conditions of approval
14 in the proposed order pertaining to the retirement and
15 financial assurance standard and that are not related to
16 the issues in the contested case with the following
17 modifications associated with condition five."

18 And sort of preface, this is not one where
19 we need the actual specific language. I think there's
20 enough in here where we have the purpose.

21 So that would be to change to require a
22 complete report at any time that Council, quote/unquote,
23 "reasonably" requires in addition to the five-year
24 frequency. And we can come up with language of how to
25 insert that appropriately, if that's where the council

1 SECRETARY CORNETT: So if that sounds
2 appropriate, then I can read.

3 Cindy Condon.

4 COUNCILMEMBER CONDON: Yes.

5 SECRETARY CORNETT: Kent Howe.

6 VICE CHAIR HOWE: Yes.

7 SECRETARY CORNETT: Jordan Truitt.

8 COUNCILMEMBER TRUITT: Yes.

9 SECRETARY CORNETT: Perry Chocktoot.

10 COUNCILMEMBER CHOCKTOOT: Yes.

11 SECRETARY CORNETT: Ann Beier.

12 COUNCILMEMBER BEIER: Yes.

13 SECRETARY CORNETT: Hanley Jenkins.

14 COUNCILMEMBER JENKINS: Yes.

15 SECRETARY CORNETT: Thank you,
16 councilmembers.

17 VICE CHAIR HOWE: Okay. We're now to
18 threatened and endangered species standard T&E one.

19 It's 8:15. Do we want to continue or try to
20 get this one done?

21 SECRETARY CORNETT: Certainly, at the
22 discretion of the Council, I think we need to get
23 through the ones that are on the list for tonight.

24 VICE CHAIR HOWE: Okay. Let's go.

25 SECRETARY CORNETT: Again, this is -- we

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1 will not be able to get through all of these unless we
 2 kind of get through them. And we really need to get
 3 through them.
 4 MS. TARDAEWETHER: Council Secretary, that
 5 was just through soil protection. So T&E and soil
 6 protection, but not the tentative need ones. Yeah.
 7 Okay.
 8 Let's rock and roll.
 9 For the record, Kellen Tardaewether, Oregon
 10 Department of Energy.
 11 Nancy is pulling up our PowerPoint here.
 12 We're going to move on to the Council's
 13 threatened and endangered species standard.
 14 I'm just going to jump in here.
 15 Council is familiar with this standard. I'm
 16 going to say that it's a little bit more of a
 17 straightforward standard, which plant species it says
 18 that we've evaluated and addresses impacts to plant
 19 species that are identified as threatened or endangered
 20 by the Oregon Department of Agriculture.
 21 And for animal species, it would be the same
 22 for animals identified by ODF&W as threatened or
 23 endangered. So that is the scope of Council's
 24 jurisdiction underneath this standard.
 25 There is overlap with federally listed

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1 species in between Oregon, however it is a different
 2 list.
 3 So the Council's fish -- the T&E, I'm going
 4 to call it T&E -- threatened and endangered standard --
 5 and Council's fish and wildlife habitat standard don't
 6 implement federal requirements. There's not a Council
 7 standard authorizing the Council to impose or enforce
 8 the federal regulations.
 9 ODF&W could -- and when I say "ODF&W,"
 10 that's the Oregon Department of Fish & Wildlife -- could
 11 make recommendations under the fish and habitat -- under
 12 their mitigation policy, excuse me, based on information
 13 about federally listed species.
 14 However, the Council doesn't have that --
 15 you know, the jurisdiction to, you know, enforce those
 16 federal regulations. However, all applicants are
 17 required to also comply with federal requirements.
 18 So there is that dual jurisdiction there.
 19 The analysis area for threatened and
 20 endangered species is a half mile from the site boundary
 21 and a half mile. That is the area that is evaluated to
 22 look at.
 23 Next slide, Nancy, please.
 24 Let's see. I have a couple tables
 25 referenced here. There were field surveys that were

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1 conducted to evaluate threatened and endangered species,
 2 along with desktop and other studies to evaluate
 3 threatened and endangered species. I'm sorry. I'll get
 4 into it here.
 5 And then I have a little snippet from Table
 6 T&E 2 in this table naming is from the proposed order,
 7 and those are the page numbers for these. These are the
 8 three -- little bit hard to see there, but there's
 9 three threatened and endangered species potentially in
 10 existence and potentially impacted by the facility.
 11 One is the wolverine, Washington ground
 12 squirrels, or "WGS," and then Snake River summer Chinook
 13 salmon.
 14 The next slide, please.
 15 So let's see. We have the -- the WGS, I had
 16 mentioned those on the onset. Those -- it's specific
 17 area where -- where there is WGS habitat. WGS habitat
 18 is category one according to ODF&W. That is an
 19 avoidance measure. So they are -- avoid impacts.
 20 There's no mitigating impacts to those.
 21 So your threatened and endangered species
 22 condition one is the avoidance of the WGS habitat. And
 23 then there's specific definitions of that -- types of
 24 habitat for them.
 25 And then there's also condition two, which

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1 imposes buffers to certain threatened and endangered
 2 plant and animal species.
 3 And then I have this recommended fish and
 4 wildlife condition 16 under here which is, again, this
 5 is, like, interrelated conditions. We love those.
 6 But, really, it's here because it makes
 7 sense; right?
 8 Under fish and wildlife habitat standard we
 9 have conditions that say, hey, go out and do these
 10 surveys according to these protocols. It's a survey
 11 condition. And so you may as well bundle all of your
 12 species that you're surveying for under one survey
 13 condition according to certain survey protocols. So
 14 that's this condition here. The little dots there is
 15 this does also include plant species, but Jesse is going
 16 to talk about the plant species.
 17 Did you have anything you wanted to add?
 18 No. That is that.
 19 VICE CHAIR HOWE: Thank you, Mr. Ratcliffe.
 20 MR. RATCLIFFE: Thank you, Vice Chair Howe.
 21 So we have one issue under threatened and
 22 endangered species that has an exception that was filed
 23 by Ms. Geer. The issue is -- and I guess if we could go
 24 one slide forward, I think that will do it.
 25 There we go. Whether the applicant was

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1 required to have an Oregon Department of Agriculture
 2 botanist review the application for site certificate.
 3 And so the hearing officer's opinion on that
 4 issue was to note the -- part of the rule that's
 5 applicable here from the Council's Division 22, which
 6 requires that the Council consult with the appropriate
 7 state agencies on the evaluation of impacts and
 8 mitigation to threatened and endangered species.
 9 The hearing officer ruled that consultation
 10 is not defined in the EFSC rules, but based on
 11 dictionary definitions "consult" is ordinarily
 12 understood to mean the act of taking for -- the act of
 13 asking for advice or opinion of someone.
 14 The standard does not require that the
 15 Department or the applicant demonstrate that a
 16 Department of Agriculture botanist from the Native Plant
 17 Conservation Program review the site certificate during
 18 every phase of the process. It simply requires
 19 consultation during the process.
 20 Further, she found that the Department of
 21 Agriculture is a reviewing agency and received notice of
 22 the preliminary application for site certificate, the
 23 amended application for site certificate, and the
 24 complete application for site certificate.
 25 The Department of Agriculture submitted

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1 comments on the preliminary application for site
 2 certificate and ODA botanist, Rebecca Currin, provided
 3 comments in April 2014 concerning threatened and
 4 endangered place species and mitigation options.
 5 So, again, that's the Council's ruling. And
 6 I believe because Wally is here at the table that means
 7 we have a recording of Ms. Geer's oral argument on this
 8 issue.
 9 MR. ADAMS: This is very high tech.
 10 Just for the court reporter's benefit, if
 11 you have any trouble hearing this, just interrupt and
 12 let us know. But this should work.
 13 MR. RATCLIFFE: That's a good point.
 14 (Recording played)
 15 "Susan Geer, issue TE-1. I'm a botanist
 16 and plant community ecologist
 17 specializing in rare plants and
 18 monitoring plant communities for nearly
 19 30 years. I request that the Council
 20 deny the site certificate or remand to
 21 the Judge for more evidence on a new
 22 proposed contested case order and to
 23 ODOE for updated analysis with the
 24 current threatened and endangered plant
 25 list in current proposed routes.

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1 Exception one, Judge Webster erred by
 2 concluding that the consultation about
 3 Oregon's rare plants does not need to
 4 involve the Native Plant Conservation
 5 Program, hereafter the "Rare Plant
 6 Program." A rare plant botanist
 7 representing the State of Oregon should
 8 review and comment on the final ASC.
 9 The proposed routes on federal land were
 10 reviewed by a federal agency botanist,
 11 but the routes on the other
 12 ownerships (private, city, and
 13 county) did not receive the same level
 14 of review. Please read my responses to
 15 motions for summary determination.
 16 Exception 2, Judge Webster erred in
 17 the summary determination by finding a
 18 2013 comment in the 2014 meeting between
 19 ODOE and ODA's rare plant botanist was
 20 sufficient consultation. Judge Webster
 21 misstates a legal issue in the proposed
 22 contested case order. State law
 23 requires the Council to consult with
 24 appropriate state agencies.
 25 Judge Webster reasons that ODOE was

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1 acting for the Council when it mailed
 2 notifications and received a comment in
 3 2013 and thus met requirements. Rather
 4 than whether ODOE met cursory
 5 requirements, the real issue is whether
 6 the Council is fully informed of the
 7 effects of the facility on T&E plant
 8 species as required by state law.
 9 Information used by the rare plant
 10 botanist in her comments was five years
 11 prior to the 2018 filing of the final
 12 ASC and prior to the time that the
 13 current routes were proposed. ODOE made
 14 no effort to notify the ODA of the
 15 current routes. The 2014 meeting was
 16 not meant to be a final consultation.
 17 The amended proposed ASC was still under
 18 development. Meeting notes show that
 19 the rare plant botanist expected further
 20 involvement and they state that if the
 21 rare plant botanist is unable to respond
 22 for lack of resources, ODOE has a
 23 compensation agreement with ODA.
 24 Nonetheless, funding ended and there was
 25 no program for several years. Thus, ODA

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1 was not an effective reviewing agency.
 2 The Council should use the current T&E
 3 plant list. ODA's original list is from
 4 1988. By law, that would be reviewed
 5 every five years, yet it has never been
 6 updated. There have been attempts to
 7 find updates. Native Plant Society of
 8 Oregon successfully petitioned the state
 9 legislature for those funds in 2017 and
 10 2021. There are now recommended
 11 updates. The Rare Plant Program expects
 12 to adopt them in 2023. The recommended
 13 list contains species which would be
 14 impacted by B2H and they deserve
 15 protection. Judge Webster mistakenly
 16 states that I offer no material evidence
 17 of rare species in more recently
 18 proposed routes. Two species on the
 19 list are found on Glass Hill and would
 20 be impacted by clinopodium douglasii and
 21 potential occurrences of pericomis
 22 (indecipherable), the Council should
 23 conduct a full review of the current
 24 proposed routes and consult with ODA's
 25 Rare Plant Program using the updated

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1 application distribution rules or an appropriate state
 2 agency for purposes of the threatened and endangered
 3 species standard.
 4 Instead, the appropriate state agency is ODA
 5 and the record demonstrates that ODA was provided the
 6 opportunity to review and comment on each iteration of
 7 the ASC.
 8 In Ms. Geer's second exception to TE-1, she
 9 challenges the hearing officer's ruling on summary
 10 determination that ODA's 2013 comments and 2014 meeting
 11 with ODOE were sufficient consultation.
 12 Ms. Geer asserts that further consultation
 13 was necessary, but the record demonstrates that Idaho
 14 Power and ODOE provided to ODA copies of each iteration
 15 of the ASC, and thereby gave ODA an opportunity to
 16 comment. ODA, therefore, had additional opportunities
 17 to provide comment on these topics.
 18 While the Department rules do not define
 19 consultation, the hearing officer concluded that the
 20 term is ordinarily understood to mean the active asking
 21 for advice or opinion of someone.
 22 This definition is also supported by Oregon
 23 case law and the Oregon Court of Appeals has concluded
 24 that when consult is not defined by state, an agency
 25 satisfies that obligation by inviting other parties to

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1 recommended T&E list."
 2 MS. PEASE: Thank you, councilmembers.
 3 Good evening. My name is Jocelyn Peace for
 4 Idaho Power Company.
 5 In Ms. Geer's first exception to TE-1 she
 6 challenges the hearing officer's ruling on summary
 7 determination that the Council is not required to
 8 consult with the Native Plants Conservation Program, or
 9 NPCP, and that the consultation with the Oregon
 10 Department of Agriculture was adequate for purposes of
 11 meeting the threatened and endangered species standard.
 12 The standard provides for consultation with
 13 appropriate state agencies and in connection
 14 with threatened and endangered plants includes
 15 references to the Oregon Department of Agriculture.
 16 Neither the EFSC statutes nor the EFSC rules
 17 further define the term appropriate state agencies or
 18 include any specific reference to the NPCP.
 19 Idaho Power complied with all requirements
 20 to allow the Oregon Department of Agriculture, which
 21 oversees the NPCP, an opportunity to review and provide
 22 comments on the ASC.
 23 However, Idaho Power is not required to
 24 solicit comments specifically from the NPCP because the
 25 NPCP is not a reviewing agency for purposes of EFSC'S

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1 comment. Relying on that common definition, ODOE
 2 complied with its consultation obligations by inviting
 3 ODA to comment.
 4 Ms. Geer also argues that ODA lacked funding
 5 to review the ASC, but didn't provide any evidence in
 6 the record to support this assertion. Moreover, ODOE
 7 informed ODA that there was an existing compensation
 8 agreement between the agencies and, therefore, ODA staff
 9 can be reimbursed at any time -- they can be reimbursed
 10 for any time spent reviewing the ASC.
 11 Thus, there is no evidence in the record
 12 that ODA ever sought reimbursement and Ms. Geer's
 13 assertions that ODOE failed to provide funding to ODA to
 14 review the ASC is not supported by evidence in the
 15 record.
 16 Ms. Geer raises additional arguments that
 17 EFSC should consider alternative lists of rare plants.
 18 However, these arguments are clearly outside the scope
 19 of issue TE-1. And, moreover, are inconsistent with the
 20 plain text of the threatened and endangered species
 21 standard which requires EFSC to assess the plant species
 22 that ODA has listed in accordance with ODA's rules, in
 23 particular, OAR 603-073-0070.
 24 Based on the foregoing, Idaho Power
 25 respectfully requests that the Council affirm the

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1 hearing officer's ruling on TE-1.
 2 VICE CHAIR HOWE: Thank you, Ms. Pease.
 3 Does the Council have any questions?
 4 Doesn't look like it. Thank you.
 5 MR. ROWE: Patrick Rowe, Department of
 6 Justice on behalf of the Department of Energy.
 7 We agree with the comments that Ms. Pease
 8 just made.
 9 In addition to those comments, the
 10 Department would point out that there are certain
 11 conditions, recommended conditions that the Department
 12 has recommended that would involve the ODA Native Plant
 13 Conservation Program to conduct review.
 14 The Department would point Council out to
 15 fish and wildlife habitat condition one. That's the
 16 reclamation and -- which requires the reclamation and
 17 revegetation plan.
 18 That condition has a formal reviewing Agency
 19 process built into finalization of that plan. As a
 20 pre-construction requirement, it would require that
 21 Idaho Power evaluate specific vegetation, including
 22 threatened and endangered species. And that would
 23 ensure that if there were to be any impacts to T&E plant
 24 species, ODA, including ODA's native plant conservation
 25 program, would have the opportunity to weigh in and

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1 concur on level of impact avoidance and necessary
 2 mitigation.
 3 Also, land use condition 14, the
 4 ag. mitigation plan would also evaluate sensitive
 5 resources, such as threatened and endangered plant
 6 species that are present within private EFU lands.
 7 So those additional conditions we just
 8 wanted to call to your attention to make sure you
 9 understand that this doesn't mean that ODA's native
 10 plant conservation program isn't going to continue to be
 11 involved.
 12 VICE CHAIR HOWE: Any questions from
 13 Council?
 14 Okay. Counsel Ratcliffe.
 15 MR. RATCLIFFE: Yeah. So, once again, we've
 16 had the overview of the threatened and endangered
 17 species standard provided by Kellen, and that's all that
 18 we have in terms of this particular issue.
 19 And so now is the chance for Council to
 20 deliberate or ask any questions you might have of me.
 21 VICE CHAIR HOWE: Okay. Question/comments
 22 from Council?
 23 Councillor Condon.
 24 COUNCILMEMBER CONDON: Thank you.
 25 Councilmember Condon.

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1 I was a little bit concerned about the
 2 timing involved here with the consultation in 2013/2014
 3 versus the date of the application.
 4 Was there -- is that typical or was there
 5 another attempt, other than just sending the -- the
 6 application to ODA -- was there any other communication
 7 with ODA?
 8 MS. TARDAEWETHER: Yes. So the applicant --
 9 I believe this is summarized in the proposed order --
 10 kind of did in-person outreach and there was meetings in
 11 the original PASC, which is 2013.
 12 And then -- I would have to go back and look
 13 at the record to confirm on whether or not in between
 14 that gap, because basically the project kind of got put
 15 on pause -- an amended preliminary one in 2017. But at
 16 that time, then we did go back out for comments. We
 17 just -- there was kind of a communication or a staffing
 18 gap with ODA at that time. We didn't really have
 19 somebody that would -- they didn't respond. Thank you.
 20 So it was -- it was hard to get -- I mean,
 21 we can't -- in our memos that we sent out to reviewing
 22 agencies, we do include a portion that says, "if you
 23 don't provide comments, we assume that you're okay with
 24 the information."
 25 I mean, we -- we tried, but we -- they

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1 didn't provide comments.
 2 COUNCILMEMBER CONDON: Thank you.
 3 VICE CHAIR HOWE: Okay. Is Council then at
 4 the point that -- see if I have this right -- that the
 5 hearings official exception decision stands as is and
 6 the proposed order stands?
 7 Yeah. The contested case order. Both of
 8 them.
 9 SECRETARY CORNETT: In this instance, I
 10 could do a consolidated straw poll, if that was
 11 acceptable.
 12 VICE CHAIR HOWE: This is a good one to do
 13 it on, I think.
 14 SECRETARY CORNETT: Okay. So I will read
 15 the potential and you can tell me if you agree.
 16 So "agree with the findings of fact,
 17 conclusions of law and conditions of approval in the
 18 proposed order pertaining to the threatened and
 19 endangered species standards -- standard that are not
 20 related to the issues in the contested case and in the
 21 proposed contested case order pertaining to issue TE-1."
 22 VICE CHAIR HOWE: Okay. Works.
 23 SECRETARY CORNETT: Kent Howe.
 24 VICE CHAIR HOWE: Yes.
 25 SECRETARY CORNETT: Ann Beier.

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1 COUNCILMEMBER BEIER: Yes.
 2 SECRETARY CORNETT: Hanley Jenkins.
 3 COUNCILMEMBER JENKINS: Yes.
 4 SECRETARY CORNETT: Jordan Truitt.
 5 COUNCILMEMBER TRUITT: Yes.
 6 SECRETARY CORNETT: Perry Chocktoot.
 7 COUNCILMEMBER CHOCKTOOT: Yes.
 8 SECRETARY CORNETT: Cindy Condon.
 9 COUNCILMEMBER CONDON: Yes.
 10 SECRETARY CORNETT: Thank you,
 11 councilmembers.
 12 VICE CHAIR HOWE: Okay. We set a record on
 13 that one. There's the soil protection.
 14 MS. TARDAEWETHER: For the record, Kellen
 15 Tardaewether. I'm going to go over the soil protection
 16 standard. I have the language of the standard up here
 17 on the screen.
 18 This is a little bit more of a
 19 straightforward standard, as we like to say. But
 20 nothing is ever really that way. But it's -- as Council
 21 was finding, that the applicant can design, construct,
 22 and operate the facility, taking into account
 23 mitigation, that it's not likely to result in
 24 significant adverse impacts to soil.
 25 Now, in here I'm going to just kind of

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1 highlight, we have some things listed. We have erosion
 2 and I'm just going to kind of skip over and then say
 3 "chemical spills." Right?
 4 Those are kind of the big ones we're going
 5 to talk about with the proposed order and the ASC talks
 6 about.
 7 But it does also say, "including but not
 8 limited to," meaning that it could talk about other
 9 things.
 10 I do want to point out that the language
 11 here for the standard does correspond with the
 12 information requirement under Division 21.
 13 So the -- the application requirements say,
 14 hey, provide information about these things listed. And
 15 so that's -- that's the -- so that's what is generally
 16 provided.
 17 However, in this application, it's
 18 Exhibit I, there is a wealth of information because this
 19 is -- it's a long facility and there's lots of soil
 20 types, et cetera.
 21 The temporary impacts to soil are about 4300
 22 acres and then the permanent impacts are 757 acres.
 23 The temporary impacts are impacts that are
 24 associated -- next slide, please, Nancy -- that are
 25 associated with construction. We're kind of familiar

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1 with talking about that. So these are temporary roads,
 2 the multi-use areas, the pulling and tensioning sites,
 3 and the activities that would impact soils are the
 4 clearing and rubbing, the grading. Vehicle compaction
 5 from going in and driving on these roads.
 6 So the temporary -- the areas temporarily
 7 impacted associated with the construction of the
 8 facility in restoration would have to be de-compacted
 9 and revegetated and there are conditions that address
 10 both of those.
 11 The permanent impacts to soils are kind
 12 of -- make sense. They are like the permanent tower
 13 structure, the permanent infrastructure on the ground
 14 are those permanent impacts.
 15 And then next slide -- this is just -- I
 16 have a map here. There's a very large map set that maps
 17 out all of the soils. The analysis area for soil
 18 protection is just the area within the site boundary.
 19 So that's what you would see on those MAP sets.
 20 So there's several soil protection
 21 conditions.
 22 We kind of inadvertently re-routed to one
 23 that we talked about earlier under "structure." Again,
 24 I'm just pulling and highlighting some conditions but
 25 there are more than I'm pulling out here. The staff

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1 report summarizes some too, but there's more conditions
 2 than what we're providing, but we can talk about
 3 anything.
 4 But soil protection condition one, Council
 5 is used to seeing this condition. This is that prior to
 6 construction, the -- the applicant will obtain and
 7 provide to the Department the NPDES permit, the National
 8 Pollution Discharge Elimination System, 1200-C, general
 9 construction permit typical of that permit or required
 10 in that permit is an erosion sediment control plan.
 11 So this is kind of -- this is a federally
 12 dedicated permit this is not a permit that Council is
 13 making a decision on. But we -- we, the Department,
 14 requested -- use this information to demonstrate
 15 compliance underneath the soil protection standard.
 16 And a lot of it is that erosion and sediment
 17 control plan, because that has those best management
 18 practices, the BMPs, about how the applicant is going to
 19 reduce run-off, soil erosion, dust control, et cetera.
 20 And then up on the slide here, I have the
 21 soil protection condition five, which has -- that the
 22 certificate holder shall inspect the facility components
 23 for impacts as part of its regular transmission line
 24 inspections, which this is some more of the operational
 25 aspect of addressing impacts to soils.

1 And that's what I have.
 2 Do you want to add anything?
 3 MR. RATCLIFFE: Okay. So thank you, Kellen.
 4 So we have one issue under "soil protection"
 5 that was raised by Dr. Fouty. She filed exceptions.
 6 And -- right.
 7 And the issue is whether the soil protection
 8 standard and general standard of review required
 9 evaluation of soil compaction, loss of soil structure
 10 and infiltration and loss of stored carbon in the soil
 11 and loss of soil productivity as a result of the release
 12 of stored carbon in soils.
 13 The hearing officer's opinion talked about
 14 the structure of the standard language and the use of --
 15 the phrase Kellen had mentioned -- the "including but
 16 not limited to" language and -- and read that to say
 17 that the -- you know, there are certain enumerated
 18 things.
 19 And, again, those appear in the Council's
 20 Division 21 application rules as well in terms of what
 21 needs to be submitted for a complete application that
 22 are specifically enumerated.
 23 So we have the erosion deposition
 24 application of chemical substances.
 25 But the hearing officer's view is that

1 Soil protection conditions two and
 2 three would minimize erosion and spill impacts during
 3 construction. Fish and wildlife habitat conditions
 4 would also ensure that temporary soil impacts are
 5 restored post construction through revegetation and
 6 noxious weed control within a reasonable time frame to
 7 as close to pre-disturbance conditions as possible.
 8 So that's the issue as it was framed in the
 9 contested case and the hearing officer's ruling and --
 10 and so now is the time for Dr. Fouty to provide oral
 11 argument.
 12 MR. ANUTA: My name is Karl Anuta. I
 13 represent Stop B2H. And for purposes of tonight, I'm
 14 assisting Dr. Fouty also.
 15 Stop B2H concurred in Dr. Fouty's materials
 16 in her presentations -- and so I'm going to cover both
 17 her materials and Stop's concurrence and do so briefly;
 18 and then, hopefully, answer any questions you might
 19 have.
 20 I'm going to start with the key points,
 21 which are that the proposed contested case order omitted
 22 any findings related to dynamic soil property changes.
 23 There's a lot of data put in about erosion,
 24 but that's not the only impact. Compaction in dynamic
 25 soil makes a huge difference.

1 this -- the "included but not limited to" does not
 2 necessarily require that an application for site
 3 certificate evaluate things that are, you know, perhaps
 4 of a different kind than the -- the list had provided.
 5 So the issues raised by Dr. Fouty, including
 6 the soil compaction and structure, et cetera.
 7 The hearing officer also ruled neither the
 8 application for site certificate content rule nor the
 9 standard itself require that the applicant use a
 10 specific methodology to evaluate soil types or
 11 characteristics, nor require the presentation of highest
 12 level of detail from the most current sources.
 13 The standard does not require the applicant
 14 to establish a specific time frame for restoration or
 15 recovery.
 16 Idaho Power correctly evaluated soil types
 17 within the analysis area and evaluated impacts based on
 18 potential locations of temporary and permanent
 19 disturbance. Then, in response to the issue as it was
 20 initially presented by Dr. Fouty and then supported by
 21 her arguments, Idaho Power, during the contested case,
 22 provided an updated table that presented soil
 23 information by county with the soil order, ID, name,
 24 acreage, percent, and acreage of disturbance area and
 25 soil properties.

1 In addition, the Administrative Law Judge
 2 made an evidentiary ruling at the end of the process
 3 where she improperly excluded documents that should have
 4 been in the record.
 5 Those are both fundamental errors in our
 6 part -- in our view.
 7 Dr. Fouty is a Ph.D. She's a soil
 8 specialist and hydrologist. She lives here in
 9 La Grande. She knows her materials.
 10 Her testimony was that IPC had failed to
 11 examine the impacts from the proposed facility in
 12 sufficient detail. She used best available science in
 13 her presentation. Her testimony was, in our view, and
 14 if you listen to the recordings, I think you would
 15 agree, never really credibly rebutted.
 16 When Dr. Fouty outlined in her closing
 17 remarks the fact that there was a host of failures by
 18 IPC's expert in particular to address some of the basic
 19 documents that IPC's own expert relied on, IPC asked
 20 that those documents be stricken from the record.
 21 The ALJ mistakenly agreed. And as a result,
 22 gave less weight to Dr. Fouty's testimony. Any document
 23 that IPC and its experts used should have been part of
 24 the record. Because without that, the applicant can
 25 claim anything was true and the public wouldn't have the

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1 opportunity and this Council wouldn't have the
 2 opportunity to review materials and determine if they
 3 agreed.
 4 Dr. Fouty outlined how IPC had failed to
 5 demonstrate compliance with the standard. There was a
 6 lot of discussion about how -- and the condition you saw
 7 a few minutes ago on SP-1 was that the Department was
 8 relying on the NPDES permit from DEQ. That permit, as
 9 was outlined by Dr. Fouty, only addresses erosion.
 10 It does not address compaction; it does not
 11 address dynamic soil changes; it does not address any of
 12 those other issues. Reliance on that is inadequate.
 13 There were a number of fundamental problems
 14 with the IPC analysis. I encourage you to read
 15 Dr. Fouty's exceptions. They are very detailed and very
 16 scientific.
 17 And thank you, Secretary Cornett. I was
 18 going to point out that I'm using both her time and
 19 mine.
 20 Dr. Fouty also outlined how the proposed
 21 mitigations by IPC were not consistent with the stated
 22 goals, they weren't peer-reviewed, and they didn't
 23 follow the literature.
 24 She noted that IPC used the wrong NRC soil
 25 database when that resulted in planning level analysis

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1 rather than project level analysis. That's important
 2 when you're doing mitigation.
 3 IPC used the wrong analysis for soil
 4 impacts. Because it used a larger soil boundary rather
 5 than a smaller soil impact area, thus incorrectly
 6 minimizing the nature -- or the magnitude of the soils
 7 impacts, IPC misrepresented the longevity of this soil
 8 impact by stating that the impacts would be "temporary";
 9 and then defining "temporary" as "the life of the
 10 project" which you have already heard is "forever." Not
 11 what most of us would consider a temporary impact.
 12 She also noted that IPC failed to provide a
 13 soils restoration plan and instead relied on vegetation
 14 restoration plan as a proxy for soil productivity.
 15 IPC also failed to identify major soil types
 16 in the analysis area, incorrectly discussed the soil
 17 order, the broad -- highest level soil category, and
 18 they failed to identify all current land uses on
 19 productive soils. That's also important.
 20 The fundamental problem here is that the --
 21 Dr. Fouty's testimony should have been given more
 22 weight. The hearings officer disregarded some of the
 23 literature she cited.
 24 And we think that this, under the
 25 circumstances, should motivate this Council to send this

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1 issue back for further analysis by the Administrative
 2 Law Judge and a further hearing on these detailed
 3 scientific issues.
 4 I'm happy to answer any questions, if you
 5 have any.
 6 VICE CHAIR HOWE: Thank you, Karl. I didn't
 7 get your last name.
 8 MR. ANUTA: Anuta.
 9 VICE CHAIR HOWE: Anuta.
 10 Any questions of Mr. Anuta?
 11 Okay. Thank you.
 12 MS. PEASE: Thank you, again. This is
 13 Jocelyn Pease, for the record.
 14 Dr. Fouty raised many issues in her
 15 exceptions filing. And Idaho Power fully addressed
 16 these issues in its responsive briefing. I will just
 17 focus on several of the key arguments that Dr. Fouty had
 18 made in her exceptions filing and attempt to address in
 19 the short time the number -- a number of the issues that
 20 Mr. Anuta had also raised.
 21 First, in her exceptions filing, Dr. Fouty
 22 argues that Idaho Power should have addressed additional
 23 soil properties in its analysis regarding the soil
 24 protection standard.
 25 In support of this argument, Dr. Fouty

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1 emphasized language in the standard regarding impacts to
 2 soils, including but not limited to erosion and chemical
 3 factors such as salt deposition from cooling towers,
 4 land application of liquid effluent and chemical spills.
 5 Dr. Fouty urges that the Council should read
 6 the phrase "including but not limited to" expansively.
 7 However, Idaho Power explained in its
 8 briefing that when applying Oregon principles of
 9 statutory interpretation to discern the intent behind
 10 the regulation, it is clear that the scope of the
 11 standard is limited to the common characteristic between
 12 the specific examples and the standard.
 13 Consequently, the general term "impact to
 14 soils" must be interpreted considering the commonality
 15 between the specific terms of the regulation. And this
 16 was a point that Mr. Ratcliffe had also pointed out in
 17 his remarks.
 18 On the other hand, in her analysis,
 19 Dr. Fouty provided no legal basis for her interpretation
 20 of the soil protection standard. Instead, it is simply
 21 to satisfy her opinion that the soil properties listed
 22 in her issue statement are necessary to satisfy the
 23 standard.
 24 Furthermore, Dr. Fouty's request to evaluate
 25 additional soil properties is essentially an academic

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1 exercise. Idaho Power's expert witness addressed this
 2 issue during cross-examination, explaining, at length,
 3 that Dr. Fouty's requests are not consistent with
 4 industry standards and that Idaho Power and others are
 5 not expected to perform the academic research project
 6 level of analysis that Dr. Fouty demands but, rather,
 7 the project evaluation must conform to industry
 8 standards which rely on agency-issued guidance documents
 9 and best management practices, or BMPs.

10 Second, Dr. Fouty claims that Idaho Power's
 11 analysis was not sufficiently granular. However, there
 12 is no evidence in the record that supports Dr. Fouty's
 13 claim that compliance with the soil protection standard
 14 requires a more granular analysis or that a more
 15 granular analysis would result in any new or different
 16 mitigation measures, or BMPs, to achieve compliance with
 17 the standard.

18 And, in fact, the level of data that Idaho
 19 Power provided is consistent with the other applications
 20 that have come before the Council.

21 Contrary to Dr. Fouty's assertions, Idaho
 22 Power committed to performing mitigation in connection
 23 with potential impact to soils. Idaho Power will
 24 conduct construction activities in accordance with
 25 Oregon environmental laws and permits, including the

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1 erosion and sediment control plan that accompanies
 2 the ODEQ-issued 1200-C permit and the reclamation and
 3 revegetation plan which will be reviewed by the Oregon
 4 Department of Agriculture and the Oregon Department of
 5 Fish and Wildlife, Idaho Power will work closely with
 6 these agencies during the preparation and implementation
 7 of these plans.

8 Now, in response to Mr. Anuta's assertion
 9 that the analysis had failed to adequately address
 10 dynamic soil properties, like compaction.

11 In fact, the issues around compaction are
 12 addressed through the reclamation plan. The reclamation
 13 plan provides an explanation of how Idaho Power will
 14 treat the soils following construction, which will
 15 include, in some cases, ripping the soil and working to
 16 revegetate the landscape. And the best determination as
 17 to whether this mitigation will be successful will be
 18 the revegetation efforts.

19 And Idaho Power is bound to monitor the
 20 success of those revegetation efforts and if they're not
 21 working to perform adaptive management. And so those
 22 measures that are already in place will, in fact, ensure
 23 that -- that mitigation is accomplished for the soils.

24 Regarding Mr. Anuta's assertion about
 25 documents that were excluded, the -- the way that worked

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1 was in the contested case there is a portion that's
 2 dedicated to developing an evidentiary record and then
 3 that record closes and there's briefing.

4 And after the close of the evidentiary
 5 record, no one else is allowed to put more evidence into
 6 the record. It's closed. And then folks can argue the
 7 merits of the evidence on briefing.

8 And so what Mr. Anuta is referring to, is
 9 evidence -- or documents that Dr. Fouty had attempted to
 10 put into the record late in the -- late in the
 11 proceeding after the close of the evidentiary record and
 12 those documents were properly excluded.

13 Thank you.

14 VICE CHAIR HOWE: Thank you, Ms. Pease.
 15 Are there any questions?
 16 Okay.

17 MR. ROWE: Just a few comments on behalf of
 18 the Department.

19 Patrick Rowe with the Department of Justice.
 20 The thrust of Dr. Fouty's argument seems to
 21 be that Idaho Power's application is not complete. She
 22 argues Idaho Power should have conducted, you know,
 23 several different types of analyses that it did not,
 24 which Mr. Anuta listed and Ms. Pease also referenced.
 25 Council has rigorous requirements for approval of a site

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1 certificate, including with regard to compliance with
 2 its soil protection standard.

3 But in making her arguments, Dr. Fouty is
 4 setting a bar for approval that is even higher than what
 5 is required in law and in Council's rules.

6 The rules in Division 21, Council's rules
 7 that govern what information must be included in an
 8 application, the rules don't require analysis of the
 9 items that Dr. Fouty is suggesting.

10 As has been discussed, the only specific
 11 items addressed in the rule are erosion and whether
 12 there are chemical factors related to operation of the
 13 facility that could adversely impact soils. Idaho Power
 14 conducted those analyses.

15 Second, Council can find -- as we've
 16 discussed throughout the evening, it can find compliance
 17 with one of its standards based not just on the
 18 information in an application but also on conditions
 19 that Council imposes.

20 We have Mr. Ratcliffe and Ms. Pease
 21 referenced a couple of those conditions. I'll point
 22 them out. I think I'm going to overlap in, at least,
 23 one or two of these with what Mr. Ratcliffe and
 24 Ms. Pease said.

25 I would point your attention to soil

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1 protection conditions one and two. Those would minimize
 2 erosion and soil impacts. Those are on pages 97 and 99
 3 of the proposed order.
 4 And, actually, I'm not going to give you the
 5 page references because there are two different ways to
 6 reference the pages with, which I won't bore you with.
 7 But at any rate, soil protection conditions
 8 one and two, land use condition 14, and fish and
 9 wildlife habitat conditions one and three would also
 10 ensure that temporary soil impacts are restored post
 11 construction. That's the one that I think Mr. Ratcliffe
 12 mentioned.
 13 Soil protection condition three. That has
 14 the erosion best management practices under the 1200-C,
 15 which Mr. Anuta referenced.
 16 Fish and wildlife habitat conditions one and
 17 three include very detailed pre-construction
 18 assessments, landowner consultation, ongoing treatment
 19 and monitoring during the first five years, and also
 20 assessment for long-term obligations.
 21 So, in short, I think the two points that I
 22 would like you to take away are, one, Dr. Fouty is
 23 asking for analyses that go beyond what the Council's
 24 rules require and there are conditions that the
 25 Department has recommended that will address soil

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1 impacts.
 2 COUNCILMEMBER CONDON: Councilmember Condon.
 3 I'm curious about the "five year."
 4 Monitoring goes for five years and then what happen --
 5 what's the -- what's the timing after that?
 6 Does the Department --
 7 MR. RATCLIFFE: I'm going to kick this one
 8 over to Kellen or Sarah.
 9 MS. ESTERSON: So reclamation and
 10 revegetation is viewed as short-term. And so it's
 11 typical to set a five-year milestone where there is more
 12 aggressive monitoring and treatment and restoration in
 13 that first five years.
 14 But then, for this plan under that
 15 condition, at the five-year mark, then based on
 16 evaluation of the first five years, they will develop a
 17 long-term monitoring plan. And it might be different
 18 for certain areas. It's everything is going to be quite
 19 specific for various segments. But -- so it will be a
 20 large long-term plan with different levels of monitoring
 21 depending on the success of the first five years.
 22 COUNCILMEMBER CONDON: So just a follow-up
 23 on that. So because this is -- or as I understand it,
 24 it's going to be constructed in phases.
 25 MS. ESTERSON: Uh-huh.

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1 COUNCILMEMBER CONDON: So will each of those
 2 phases have a five-year monitoring time frame?
 3 MS. ESTERSON: I guess I imagined it to be
 4 that the line would become operational at one point in
 5 time. While it might be phased in operation, I think
 6 there's going to be one point in time when the full line
 7 goes in operation that that starts to trigger the
 8 operational monitoring.
 9 Now, many of these plans have construction
 10 requirements as well. So there will be a different set
 11 of actions that are happening during construction that
 12 are really like treatment, avoidance, monitoring,
 13 control, but then that's different than restoration.
 14 And that's --
 15 COUNCILMEMBER CONDON: That's during
 16 construction --
 17 MS. ESTERSON: Right.
 18 COUNCIL MEMBER CONDON: -- right, as opposed
 19 to when construction is finished?
 20 MS. ESTERSON: Right. So many of these
 21 plans have multi-temporal component where they have to
 22 do pre-construction assessment, construction activities,
 23 and then short- and long-term monitoring.
 24 COUNCILMEMBER CONDON: Thank you.
 25 VICE CHAIR HOWE: Thank you, Ms. Esterson.

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1 Okay. So we're ready now to -- does the
 2 Council have a different -- we've got the proposed
 3 order. We've got the proposed exception -- wait.
 4 Contested case order.
 5 Do we have differences on those two or are
 6 we ready to have Todd call the roll on that?
 7 So this is -- well, go ahead, Cindy. Yeah.
 8 So I don't have any objections to the
 9 proposed contested case order, because I believe that
 10 what was being asked of Idaho Power was beyond the
 11 industrial standard and the goal is to meet the soil
 12 protection standard.
 13 And I think with the various plans that
 14 are -- that are required under the conditions, I think
 15 that they adequately address that. So I don't have any
 16 problems with the proposed contested case order or the
 17 proposed order.
 18 Where's the rest of the Council?
 19 Any difference of opinion on that? Hearing
 20 none.
 21 Councillor Condon.
 22 COUNCILMEMBER CONDON: Councilmember Condon.
 23 I have some concern about the most current
 24 science being used or not being used, as someone might
 25 say.

1 And -- and I'm sorry, I don't have it up in
2 front of me, but is there a requirement -- a condition
3 that requires survey prior to construction?

4 It seems like there are -- there was related
5 to this soil protection. And it wasn't clear to me of a
6 that's -- if that speaks to that most current
7 information available or best available science.

8 I would hope we're using the best available
9 science and most current information.

10 So I'm just curious if -- now we're -- you
11 know, the project is ready, is there a survey --

12 VICE CHAIR HOWE: I'm not sure that the
13 standard requires that, though, Cindy.

14 COUNCILMEMBER CONDON: Pardon?

15 VICE CHAIR HOWE: I'm not sure that the
16 standard requires that.

17 COUNCILMEMBER CONDON: I'm not either. I'm
18 wondering if it does. Or if we just use any data, use
19 any survey requirement.

20 MS. TARDAEWETHER: For the record, Kellen
21 Tardaewether. It is a little bit hard to see. I need
22 to zoom it in. But I have the language which is -- it
23 says, "Information from reasonably available sources
24 regarding soil conditions and uses in the analysis
25 area."

1 So, I mean, it's more data than we would
2 normally get in an Exhibit I to evaluate potential
3 impacts under soil.

4 COUNCILMEMBER CONDON: Thank you.

5 VICE CHAIR HOWE: Okay. I think we're ready
6 to entertain a roll call on both the proposed order and
7 the proposed contested case order.

8 COUNCILMEMBER CHOCKTOOT: Just for the
9 record, this is Perry Chocktoot.

10 And I hate to complicate things, but I know
11 there was a requirement to do cultural resource surveys
12 on the project. It was probably done years ago, but
13 hopefully there's a caveat for monitoring, doing
14 cultural monitoring during ground disturbance.

15 Because out there on the flat, I know
16 there's buried cultural resources and the
17 anthropological record puts the existence of Native
18 American populations pre Mount Mazama layer, so that's
19 7,000 years deep.

20 So I just wanted to bring that up. Like I
21 said, I didn't want to complicate the issues.

22 MS. TARDAEWETHER: Thank you, Councilmember
23 Chocktoot. We will talk about that underneath the
24 historical, cultural, and archeological resources
25 standard tomorrow.

1 So that's the guidance.

2 COUNCILMEMBER CONDON: Is it -- excuse me.
3 Is it expected that that be the current or
4 if there's something found ten years old?

5 MS. TARDAEWETHER: Well, we get into -- and
6 I would have to go -- maybe Sarah or Idaho Power knows
7 what the NRCS date for the soil MAP sets were. We can
8 check the date. But we might be in one of those
9 situations where it's -- since, you know, at the time it
10 was submitted, it was, you know, current but now we've
11 moved forward in time and there may be new -- new soil
12 datasets.

13 As a side note, for those familiar with
14 soils, the soil categorization doesn't really change
15 that much over time.

16 COUNCILMEMBER CONDON: So what I heard you
17 say is that at the time it was submitted, it was
18 current.

19 MS. TARDAEWETHER: That's what -- we're
20 looking. I don't know.

21 MS. ESTERSON: But in the contested case
22 proceeding, updated information was obtained from NRCS.
23 I believe the date on it is 2021. And then a much more
24 detailed poll of factors was also provided that was in
25 Idaho Power's expert witness, Mr. Madison.

1 MR. RATCLIFFE: Yeah. That's correct.

2 VICE CHAIR HOWE: Not there yet.

3 SECRETARY CORNETT: Okay. So if I heard
4 correctly, then, where we're at -- I'm sorry, let me
5 clarify, it's SP-1; right?

6 Okay. So "agree with the findings of fact,
7 conclusions of law and conditions of approval in the
8 proposed order pertaining to the soil protection
9 standard that are not related to issues in the contested
10 case and in the proposed contested case order pertaining
11 to issue SP-1."

12 VICE CHAIR HOWE: Sounds good to me.

13 SECRETARY CORNETT: Okay. Kent Howe.

14 VICE CHAIR HOWE: Yes.

15 SECRETARY CORNETT: Ann Beier.

16 COUNCILMEMBER BEIER: (No audible response.)

17 SECRETARY CORNETT: Hanley Jenkins.

18 COUNCILMEMBER JENKINS: Yes.

19 SECRETARY CORNETT: Jordan Truitt.

20 COUNCILMEMBER TRUITT: Yes.

21 SECRETARY CORNETT: Perry Chocktoot.

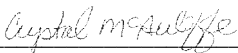
22 COUNCILMEMBER CHOCKTOOT: Yes.

23 SECRETARY CORNETT: Cindy Condon.

24 COUNCILMEMBER CONDON: Yes.

25 SECRETARY CORNETT: Thank you,

1 councilmembers.
 2 VICE CHAIR HOWE: Well, we didn't get to the
 3 needs standards.
 4 SECRETARY CORNETT: That was a potential.
 5 VICE CHAIR HOWE: Yeah.
 6 SECRETARY CORNETT: So we got through all
 7 the ones that we absolutely wanted to get through done
 8 tonight.
 9 So I appreciate everybody's efforts tonight.
 10 That was a big poll, and I think, you know, as we talked
 11 about, trying to get the cadence.
 12 They will be a little more complicated
 13 tomorrow because the -- there are more -- more issues
 14 for some of the standards. So -- but I think you kind
 15 of got the swing of things now.
 16 VICE CHAIR HOWE: We did pretty good for
 17 only being an hour late.
 18 SECRETARY CORNETT: Yes.
 19 VICE CHAIR HOWE: Okay. The time is now
 20 9:07 p.m., and the August 29th, 30th, 31st, 2022 meeting
 21 of the Energy Facility Siting Council is now recessed
 22 until tomorrow morning until 8 a.m. Thank you.
 23
 24 (Adjourned at 9:07 p.m.)
 25

1
 2 CERTIFICATE
 3
 4
 5 STATE OF WASHINGTON)
) ss.
 6 COUNTY OF KITSAP)
 7
 8 I, CRYSTAL R. McAULIFFE, a Certified Court
 9 Reporter in and for the State of Washington, do hereby
 10 certify that the foregoing transcript of the Energy
 11 Facility Siting Council Meeting on AUGUST 29, 2022, is
 12 true and accurate to the best of my knowledge, skill and
 13 ability.
 14 IN WITNESS WHEREOF, I have hereunto set my hand
 15 and seal this 6th day of September, 2022.
 16
 17 
 18 _____
 19 CRYSTAL R. McAULIFFE, RPR, CCR #2121
 Oregon CCR 22-0002
 20
 21
 22
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